

Public Utilities

FORTNIGHTLY



June 7, 1945

LET'S HAVE BOTH SIDES OF THIS
PROPAGANDA ARGUMENT

By Ted Crosby

« »

Increasing the Life Span of Invested Capital

By Ernest R. Abrams

« »

The Rural Phone Line

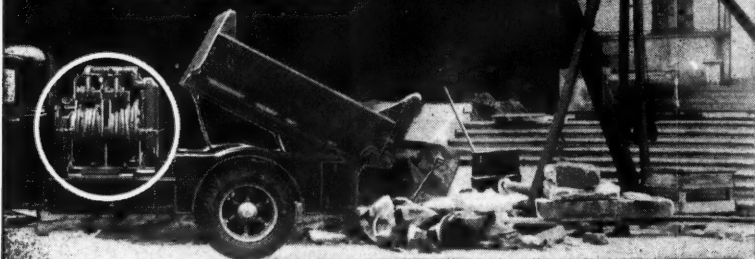
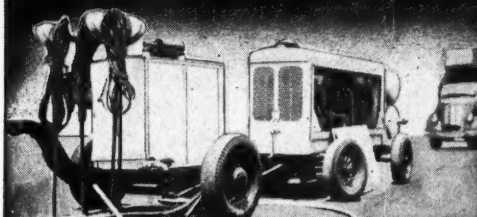
By B. Richardson

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PUBLISHERS

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DEALERS IN PRINCIPAL CITIES



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Public Utilities Fortnightly



VOLUME XXXV

June 7, 1945

NUMBER 12

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Q This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.

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JUNE 7, 1945



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Pages with the Editors

DESPITE suspicious anecdotes about futile attempts to give away dollar bills on busy street corners, human nature can be pretty gullible at times. One needs only to have the proper setting. A perfect stranger who walks up to you on the corner of Forty-second and Broadway and offers you a dollar bill without strings or explanations is obviously not functioning in a proper setting. You instinctively disbelieve him and look around for the string on the proposition. Finding none, you still back away.

BUT the shadiest looking character at a race track can actually obtain dollar bills, and more, for spurious information about horses which are warranted certain to win various races. He does this by making his proposition in an atmosphere which is peculiarly receptive to promises of allegedly accurate information about winning horses. A prominent sports writer on one of the great New York dailies recently pointed out that he had collected in his file over a number of years some 2,000 systems on winning at horses, all of which were guaranteed by their respective authors to be absolutely "sure fire" in the way of producing results.



EDWARD JOHN CROSBY

Everybody indulges in propaganda—we can't help it—so why deny it?

(SEE PAGE 729)

JUNE 7, 1945

SEVERAL of these came from state insane asylums and other institutions for mental treatment. At least two were from the inhabitants of county poor houses, and one was from a Brooklyn, New York, high school student who had never been to a horse race in his life. He had evolved his marvelous discovery after reading a few articles on the sport of kings in the daily newspapers. At that, the Brooklyn lad was the smartest of all, because he mimeographed his "system" and sold several thousand copies for a nominal sum through sporting newsstands. But he put the money in the bank for his own higher education, resisting any temptation (if he had any) to invest one red cent in his own "system."

WHEN the famous false news of VE-Day came from San Francisco on April 28th, the psychological atmosphere was just right for its reception. People were tense, keyed up by successive stories of Allied victories in Germany. They were ready at the drop of a mere hint over the microphone to run out and dance in the streets. Thousands did so and even more. Pity the poor fellow in Ohio who broke out several cases of vintage champagne he had been saving to celebrate the event and shared all of the same with his neighbors before the disappointing news came that there was still fighting in Europe.

AFTER that, the psychological atmosphere changed to one of extreme skepticism. When the real news of the German surrender came on the eve of VE-Day, May 8th (thanks to the premature press association dispatch which waited hours for confirmation), the immediate reaction of the man on the street ranged from cautious pleasure to chilly cynicism. According to a survey made by an inquiring photographer within an hour after the flash announcement on VE-Day first came over the radio broadcasting systems, not a few of the interviewees summed up their reaction in that simple, expressive colloquial word, "Nuts!"

WE stress this factor of "atmosphere," in determining public reaction, because the author of the opening feature article in this issue—it seems to us—has made an interesting and sound application of the importance of atmosphere to propaganda on controversial questions affecting public utilities. We, as a nation, have for more than a decade been psy-

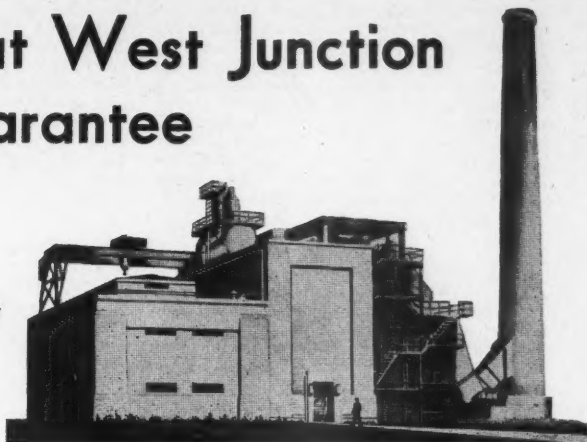
Riley Unit at West Junction exceeds guarantee

Actual Efficiency

83.55%

Guaranteed Efficiency

81.9%



Houston Lighting and Power Company recently installed a 400,000 lbs./hr. Riley Steam Generating Unit, 1000 lbs. drum design pressure, 900°F. total steam temperature. The unit when producing 419,027 pounds of steam per hour operates at an efficiency of 83.55% though guaranteed efficiency was only 81.9%.

TEST DATA

West Junction Station

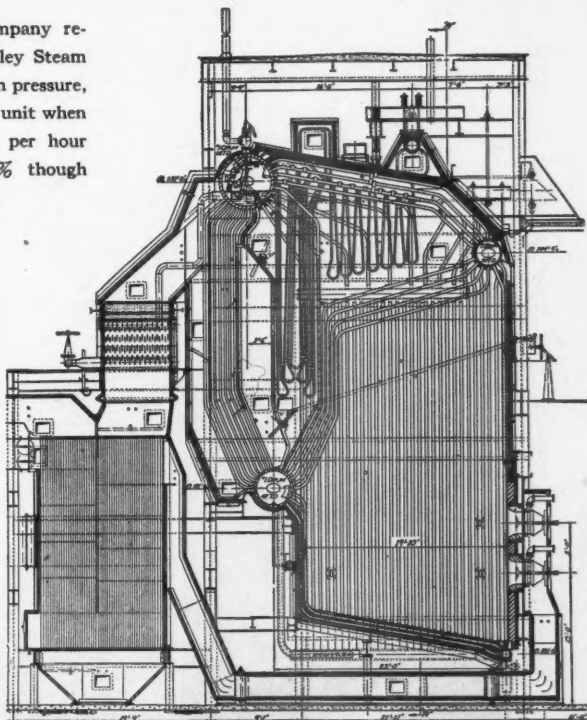
Steam per Hour	419,027 lbs.
Drum Pressure	893 lbs.
Superheater Outlet	862 lbs.
Steam Temperature	901°F.
Superheater Exit Temp.	349°F.

LOSSES—

Hydrogen in Fuel	10.67%
Moisture in Air	.18%
Flue Chimney Gas	4.64%
Radiation	.96%
Efficiency	83.55%

100.00%

Houston Lighting and Power Company operates two additional Riley units at Gable Street.



RILEY

STOKER CORPORATION, WORCESTER, MASS.

COMPLETE STEAM GENERATING UNITS

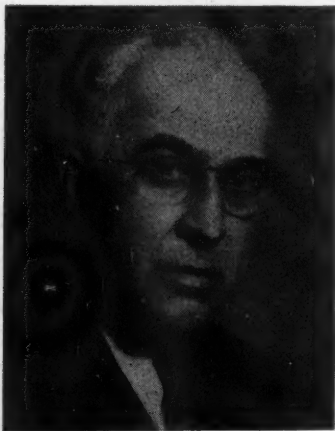
BOILERS - PULVERIZERS - BURNERS - STOKERS - SUPERHEATERS
AIR HEATERS - ECONOMIZERS - WATER-COOLED FURNACES
STEEL-CLAD INSULATED SETTINGS - FLUE GAS SCRUBBERS

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chologically "conditioned" by a series of developments to regard business-managed utility companies circumspectly if not critically. By the same token, and largely by operation of the same underlying series of developments, we have also been "conditioned" to regard certain government activities as hopeful, helpful, altruistic, humane, broad-visioned, and so forth. It suggests the old nursery rhyme about the difference between what little boys are made of, and what little girls are made of.

ACTUALLY, there is about as much real basis for this synthetic atmosphere as there would be for a seriously intended observation that little boys are the by-product of puppy dogs' tails and other vile ingredients, while little girls are inevitably the result of an ethereal concoction of "sugar and spice and everything nice." Yet, once such a discriminatory atmosphere has been established, the rôle of a hard-working propagandist—using that word in its broadest sense—becomes obviously complicated. The propagandist for the "little girls" has only to get out his copy and take some pretty pictures, while the reading world eats it up. The propagandist for the "little boys," on the other hand, has to make ten times, or more, as much effort, even to get a public hearing for his side of the question.

EDWARD JOHN CROSBY, whose realistic analysis on this point makes such an original type of article for his introductory effort in these pages, commonly writes under the pen name of "TED" CROSBY. Born in 1900 at Tacoma, Washington, he graduated from Gonzaga University at Spokane (AB, '22; MA, '24), majoring in philosophy and English. After newspaper experience with Pacific coast papers, CROSBY for twenty years occupied various ad-



ERNEST R. ABRAMS

An invested dollar is not immortal—its life span must be planned.

(SEE PAGE 742)

JUNE 7, 1945

vertising and publicity posts in the business-managed public utility industry of the Pacific Northwest. A veteran of World War I, with subsequent military experience with organized reserves in the military intelligence division, CROSBY is now engaged in a somewhat different occupational field—director of public relations of the Del Mar Turf Club Aircraft Division of Del Mar, California.

ANOTHER new contributor in this issue is B. RICHARDSON, who is telephone engineer of the Oklahoma Corporation Commission. Mr. RICHARDSON reaches the conclusion that financial assistance of some sort is necessary to rehabilitate rural telephone service as the result of grass roots, day-to-day experience with the problem over a period of years. In a recent personal letter he cited a specific typical instance of "run-down" small telephone exchanges which face successive abandonment as the result of rising operating expenses, help shortage, and other complications brought on by war.

ONE exchange at its very peak development had not produced an over-all return of more than \$1,200 a year for the owner. As a result the owner was unable to invest in necessary improvements which would make the service even worth the modest return of a dollar a month. Continuous deterioration has led to such poor service that there have been successive abandonments with resulting loss of return until now the abandonment of the entire exchange is necessary, unless an unexpected financial angel suddenly materializes.

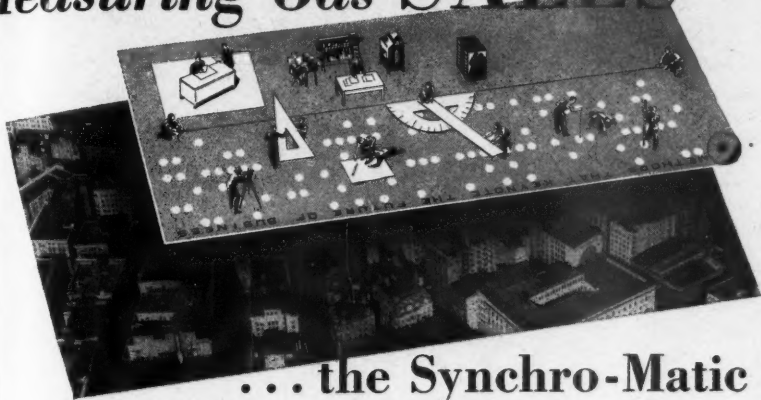
Yet, Mr. RICHARDSON tells us he honestly believes that with a certain amount of capital these tottering rural exchanges could be saved. It would need sound engineering supervision and advice; it would be, admittedly, no gold mine, but it might yield modest security for willing industry and much useful service. He points out that bargain rates are not the answer to the rural phone problem, since the average farmer is willing to pay more if he can get correspondingly good service. On the other hand, service which is altogether inadequate is not even worth a bargain price.

ERNEST R. ABRAMS, financial and business writer of New York city, whose article on increasing the life span of invested capital appears in this issue (beginning page 742), has contributed to this publication on a number of previous occasions.

The next number of this magazine will be out June 21st.

The Editors

Measuring Gas SALES



... the Synchro-Matic Way

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and takes advantage of the speed and accuracy of automatic, mechanical tabulating to produce any number of statistical analyses.

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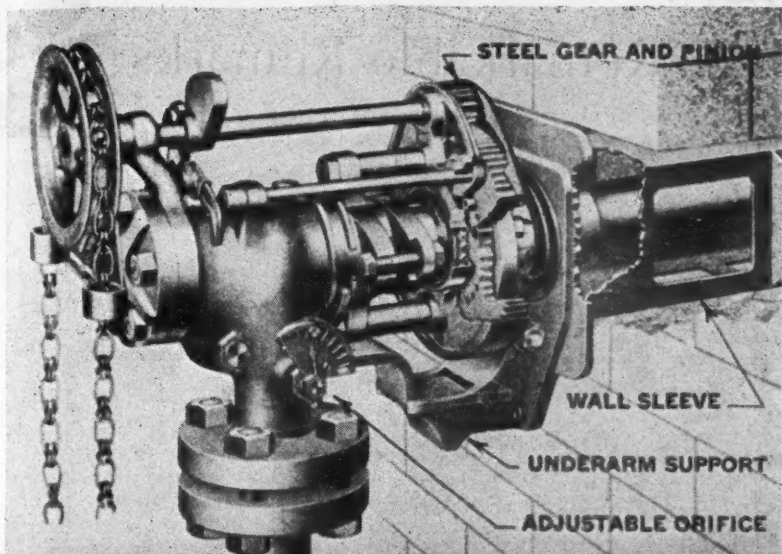
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PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 65-128, from 58 PUR(NS)



VULCAN AUTOMATIC VALVED SOOT BLOWERS

THE VULCAN AUTOMATIC VALVED HEAD, MODEL LG-2, was developed some 12 years ago as a result of an exhaustive study of existing soot blower heads and their capability of meeting the new and severe conditions about to be imposed on them by the modern high pressure boiler. A new design, breaking tradition with the old-fashioned low pressure heads, was indicated and the LG-2 head was designed with the following features in mind:

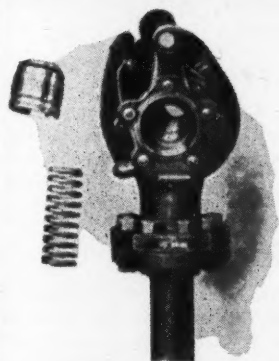
- (1) A head universal in its application
- (2) A head economical in steam (or air) consumption
- (3) A head easy to install
- (4) A head easy and simple to operate
- (5) A head low in maintenance and easy to service

The use of a pilot for operating the valve in the head proved to be the key to the required design and marked a radical departure from the traditional head of low pressure days. A single chain operating through a gear reduction revolves the element and, by means of stops at the end of the blurring arc, moves the pilot to open and close the valve in the head.

This design makes the LG-2 head universal in its application. The pilot operated valve permits the head not only to be used on low pressures but also on pressures up to 1500 pounds. Opening the valve in the head against high pressure, the bug-a-boo of most soot blower heads, is no problem with the Vulcan head as the steam pressure does the job, the operator merely having to move the small pilot valve.

Operators prefer the LG-2 head after using other heads because of its simple and easy operation. The enclosed cut steel gear and alloy pinion, the self lubricated special shaft bearings, and the enclosed ball bearing taking the steam thrust as well as the radial load all make for frictionless operation. Element binding and warping are prevented by the underarm support which balances the weight of the head and piping against an adjustable spring, without any cantilever effect on the element and permits the element to float inside the wall sleeve. A ball and socket joint in the sleeve prevents element strains by allowing relative motion of the setting and element and, at the same time, keeps the setting tight.

The interests of the contractor and boiler erector have not been overlooked in the design of the LG-2 head. It is, perhaps, the easiest head to install. Because of the flanged connection between the element and the head, the assembly of these parts in the field is relatively simple.



Cover Removed and Valve Parts Exposed

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Du Bois, Penna.



Remarkable Remarks

"There never was in the world two opinions alike."

—MONTAIGNE



*Excerpt from committee report on
reduction of nonessential Federal
expenditures.*

JOHN CLIFFORD FOLGER
*President, Investment Bankers
Association of America.*

N. R. POWLEY
*President, Pacific Telephone &
Telegraph Company.*

C. M. RIPLEY
General Electric Company.

EDITORIAL STATEMENT
Sioux City (Iowa) Journal.

JAMES A. FARLEY
*Chairman of the board, Coca-Cola
Export Corporation.*

WILLIAM H. DAVIS
*Former chairman, National War
Labor Board.*

"... to a great degree nearly all government corporations do business directly in competition with private enterprise."

"In my opinion, the SEC should be more concerned with the main purposes of getting savings into business rather than with the functions of regulation."

"In my humble opinion, the hope of America lies within the souls of the men and women who now have the toughest jobs to do—those who are in the fighting forces and those who are on the fighting fronts."

"At Niagara Falls, *ten tons* of water must make the drop in order to make one kilowatt hour. But in a modern steam power plant, one pound of coal will make one kilowatt hour. So you see, pound for pound, coal in modern power plants is 20,000 times as powerful as Niagara's water."

"Senator Murray may have overlooked an opportunity in drafting his bill [for an MVA] by not providing that the chairman of the authority ought to have some kind of crown to wear since he would be monarch of all he surveyed in the Missouri valley and his right there would be none to dispute."

"Imagine, if you can, an America in which there was only one political party and it won all the time. Imagine, if you can, an America with all enterprise owned by the state. Imagine, if you can, an America with only one press—the government's. To Americans, those things are might, but to Americans those things will never represent right."

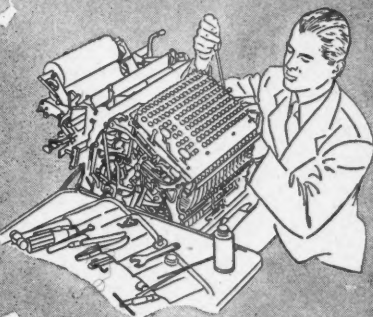
"There cannot, I believe, be a campaign after this war to break down organized labor, such as the country endured after the last war. Today labor is strong enough to offer powerful resistance to such a campaign, and management has learned enough to know that in organized labor and collective bargaining there are real values which industry cannot do without."

GEARED TO HELP YOU GET THE MOST FROM YOUR BURROUGHS MACHINES



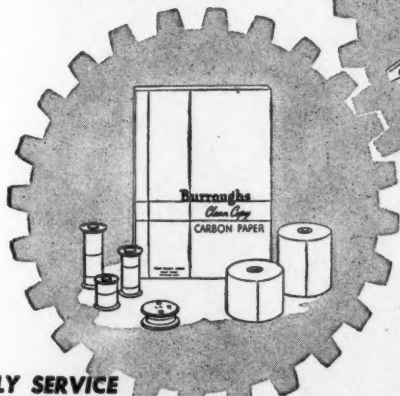
INFORMATION SERVICE

The Burroughs technical staff is working with users constantly—helping them make fullest use of the business machines they now own . . . helping them adapt these machines to new conditions. The services of this staff, as well as the up-to-date machine accounting information in the files maintained in every Burroughs office, are available to you at all times.



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Regular, periodic inspection, lubrication and adjustment of your Burroughs machines can do much to insure best performance and maximum production. All Burroughs service is rendered by factory-trained, factory-controlled service men. Cost is moderate . . . and all service work is guaranteed by Burroughs. If you have not already done so, arrange now for this efficient, low-cost protection.



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REMARKABLE REMARKS—(Continued)

EDITORIAL STATEMENT
The Houston (Texas) Chronicle.

"There are increasing indications that wartime government agencies are giving only lip service to the demobilization of bureaucracy. Plans are afoot in all emergency agencies to prolong their lives."

*Excerpt from report,
National Planning Association.*

"Full employment requires balancing the budget. This means a change in the prewar relationships of production, consumption, and savings if all Americans who need and want jobs after the war are to be employed at useful work and at good wages."

EDITORIAL STATEMENT
The New York Times.

"It is proper . . . that air lines carry their just share of the tax burden, but it is neither fair nor wise that, by reason of the very freedom and liberty of their function, which wipes out boundaries between nations and continents as well as between states, they be subjected to multiple and harassing taxation."

ROSWELL MAGILL
*Former Under Secretary of the
Treasury.*

"Taxation is always burdensome, yet it is the price we must pay for the services of government. Intelligent fiscal planning demands a constant balancing, by legislators and their constituents, of the burdens of additional taxation against the gains to be derived from additional government service."

EDITORIAL STATEMENT
Time.

"Russia's denunciation of the neutrality pact with Japan was merely an act of politics and diplomacy. But no one knows better than the Japanese that war is merely the continuation of politics by other means. As realists, the Japs could scarcely doubt that now the question is not whether, but rather where and when."

JOHN IHLDER
*Executive officer, National Capital
Authority.*

"A subway is like an iron fire escape on the outside of a building—a confession that you haven't built the building right. Subways are supposed to reduce congestion in the streets. But the building of many subways in New York has been coincident with congestion . . . until now a common saying of New Yorkers bent on some destination is: 'Shall we walk or have we time to take a taxi?'"

EDITORIAL STATEMENT
The Dallas Morning News.

" . . . some think that we [Texas] should have a 3-member, appointive oil conservation board to run our oil business because a 3-member, elective railroad commission doesn't sound right in the oil-regulating business. But by proceeding along this line of thought, we have already accumulated about the worst hodge-podge of boards and commissions of any state in the Union. Until we can have a general overhauling of the state administrative system, at least, we should follow the conservative British rule of letting well enough alone."

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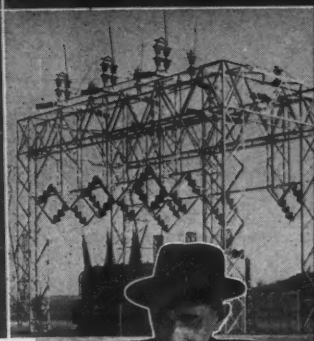
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*"There's more
here than meets
the eye"*

It's a Hi-Pressure Contact switch, designed and refined by R&IE engineers, who set a new standard in its creation.

"As neat and smart as a switch can look, and still "take it".

"What you don't see here is the constant search for improvement in design and operation. R&IE engineers are never satisfied. They know that spot-pressure, self-cleaning contacts, proper selection of materials and other manufacturing processes are fundamentally right—but, they are continually looking for refinements that will improve on present Quality and Performance. We've been at it for 33 years. In that time, every switch that went out helped establish the margin of quality that distinguishes all R&IE equipment".



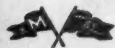
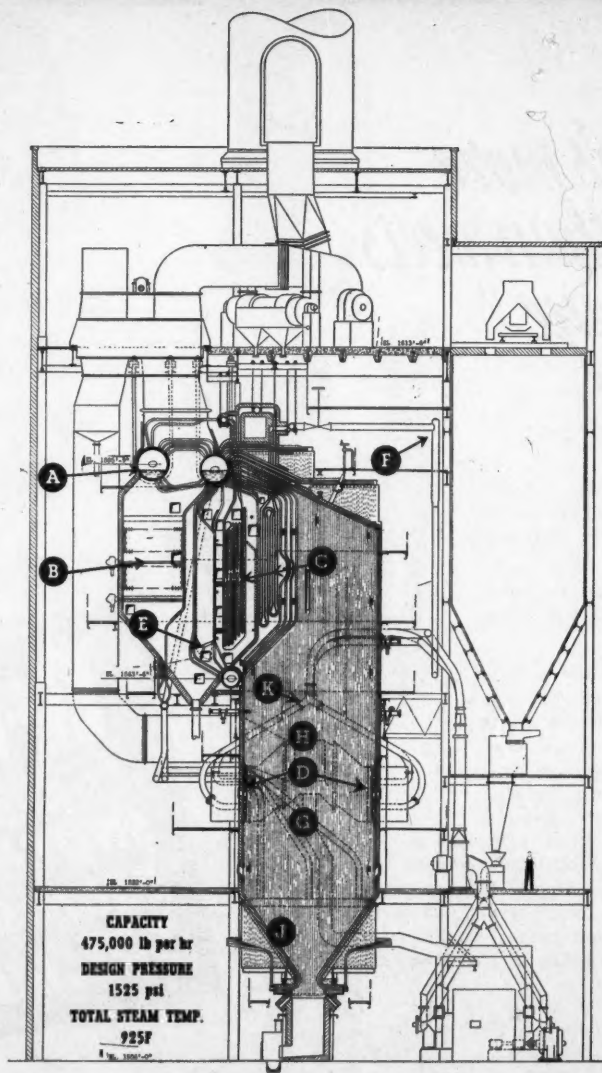
R&IE
the
**SWITCHING
EQUIPMENT
SPECIALIST**

RAILWAY and INDUSTRIAL ENGINEERING COMPANY

GREENSBURG, PA. . . . In Canada—Eastern Power Devices Ltd., Toronto

Cooperating 100% with the War Effort

Present day **TRENDS** in J



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UTILITY Steam Practice

as reflected in design characteristics of recent C-E Units

One of two units for
AMERICAN GAS AND ELECTRIC SERVICE CORP.

Installed in

GLEN LYN STATION

APPALACHIAN ELECTRIC POWER COMPANY • GLEN LYN, VA.

Principal Design Characteristics

3-drum boiler with large rear top drum providing ideal conditions for final steam cleaning and separation.

Compact arrangement of economizer in last boiler pass.

Two-stage superheater with widely spaced tubes in first stage permitting low gas velocities and thus minimizing slag accumulation. Boiler and superheater surfaces in this area completely accessible for cleaning.

Vertically adjustable burners permitting control of gas temperatures entering boiler and superheater and providing primary control of steam temperature.

Bypass damper which provides secondary control of steam temperature.

Spray type desuperheater which assures final close control of steam temperature.

Tangential firing providing maximum turbulence and rapid completion of combustion.

Simple, clean-cut furnace of ample volume for low heat release rates and with solid metal surface on all sides, top and bottom. All surfaces readily accessible for cleaning.

Completely water-cooled hopper which, in conjunction with adjustable burners, permits full utilization of lower furnace heating surfaces.

Arrangement of mill piping which permits each mill to supply fuel to all four corners of furnace.

A-87

COMBUSTION ENGINEERING

200 MADISON AVENUE

NEW YORK 16, N. Y.

PRODUCTS INCLUDE ALL TYPES OF BOILERS, FURNACES, PULVERIZED FUEL SYSTEMS AND STOKERS, ALSO SUPERHEATERS, ECONOMIZERS AND AIR HEATERS

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ARMORED CABLE • RUBBER POWER CABLES • VARNISHED CAMBRIC CABLES

CRESFLEX

NON-METALLIC SHEATHED CABLE



**FACTORY ASSEMBLED
AND TESTED**

**EASILY INSTALLED
AT LOWEST COST**

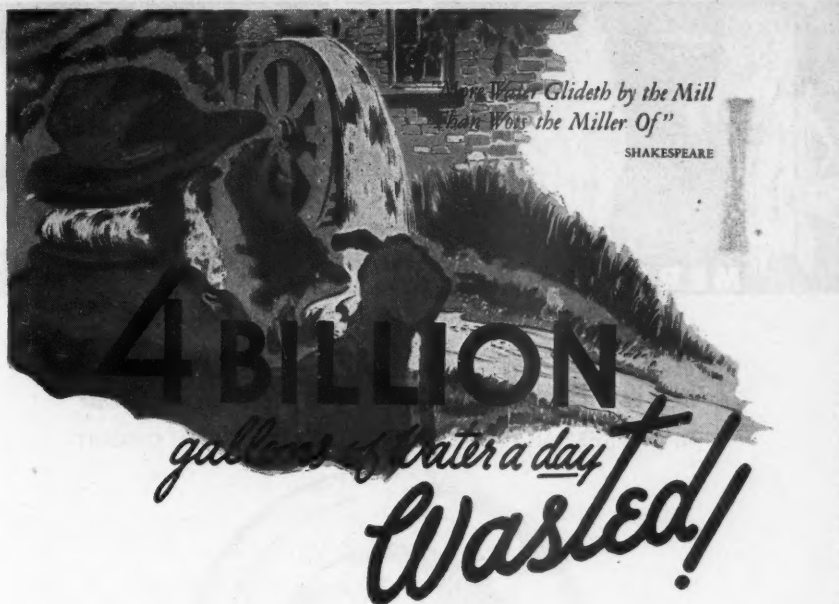
**TOUGH
PAPER ARMOR**

**WEATHERPROOF
FLAME-RETARDING
JACKET**

*Particularly well suited
for wiring farm buildings
and low cost housing.*

**CRESCENT INSULATED WIRE & CABLE CO.
TRENTON, N. J.**

BUILDING WIRE • IMPERIAL NEOPRENE JACKETED PORTABLE CABLES



THE Water Plants of this country are needlessly pumping a combined total of **FOUR BILLION** gallons of water per day, most of which could be saved, if unaccounted-for leakage or waste was brought under good economic control. It is a financial problem . . . and a *national problem when it comes to the war effort.*

Consider the total amount of chlorine and coal that is needlessly used **DAILY** to treat and to pump this tremendous **DAILY** wasted gallonage. If all public water supply systems were to make an effort to reduce unaccounted-for water you can imagine the total

possible saving of essential war materials. Such a program will not only greatly help the War effort . . . reports from numerous cities show that it will result in increased revenue, through a better accounting for water pumped into the distribution system. Records prove that one of the most effective ways to minimize needless pumpage is systematic inspection, testing and repairing of water meters, especially the smaller sizes which have been in "operation" without attention for a number of years.

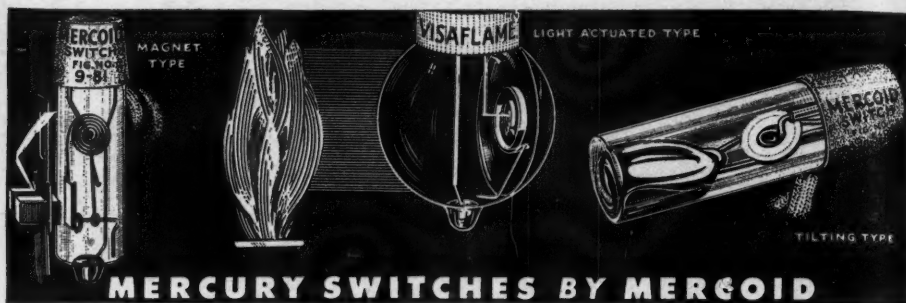
Your Trident representative will be glad to help you start a meter testing and repair program.

**Reduce Water Waste
WITH BETTER WATER METER
TESTING AND REPAIRING**

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

NEPTUNE METER COMPANY • 50 West 50th Street • New York 20, N. Y.
Branch Offices in CHICAGO, SAN FRANCISCO, LOS ANGELES, PORTLAND, ORE.,
DENVER, DALLAS, KANSAS CITY, LONGWALL, ATLANTA, HUNTON,
Neptune Meter Co., Long Branch, N.J., Canada

123



MERCURY SWITCHES BY MERCOID

HAVE THE ENDURANCE OF PROVIDING

MILLIONS

OF "MAKES" AND "BREAKS" IN THE ELECTRICAL CIRCUIT



THEY ASSURE FULL
PROTECTION AGAINST
SWITCH TROUBLES

USED EXCLUSIVELY
IN ALL TYPES OF
MERCROID CONTROLS

DA (Double Adjustment)
Pressure Control

MEANING

BETTER AND MORE DEPENDABLE CONTROL PERFORMANCE
INCLUDING MUCH LONGER AUTOMATIC CONTROL LIFE,
FOR HEATING AND AIR CONDITIONING EQUIPMENT—ALSO
FOR NUMEROUS IMPORTANT INDUSTRIAL APPLICATIONS

THE MERCROID CORPORATION, 4201 BELMONT AVENUE, CHICAGO 41, ILL.

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Save to Win
with these four simple rules
of battery care:

- 1 Keep adding approved water at regular intervals. Most local water is safe. Ask us if yours is safe.
- 2 Keep the top of the battery and battery container clean and dry at all times. This will assure maximum protection of the inner parts.
- 3 Keep the battery fully charged—but avoid excessive over-charge. A storage battery will last longer when charged at its proper voltage.
- 4 Record water additions, voltage, and gravity readings. Don't trust your memory. Write down a complete record of your battery's life history. Compare readings.

If you wish more detailed information, or have a special battery maintenance problem, don't hesitate to write to Exide. We want you to get the long-life built into every Exide Battery. Ask for booklet Form 3225.

Exide
CHLORIDE
BATTERIES

... is a vital principle
of utility operation!

Conservation of materials is no new story to the men who operate public utilities. With thrift and efficiency they have always planned for conservation.

They've squeezed the last ounce of use out of materials and equipment in their care . . . and today, that need is intensified.

One helpful principle to follow is that of "Buy to Last—Save to Win." Buy quality products and equipment, then care for it to avoid needless replacement. That conserves raw materials, labor, and space in factories. It frees these productive elements for essential war production.

THE ELECTRIC STORAGE BATTERY CO.
Philadelphia
Exide Batteries of Canada, Limited, Toronto

for
Dependable—
Fast
Trenching

**Get
the
Low
Down
On**

"CLEVELANDS"

THE CLEVELAND TRENCHER COMPANY

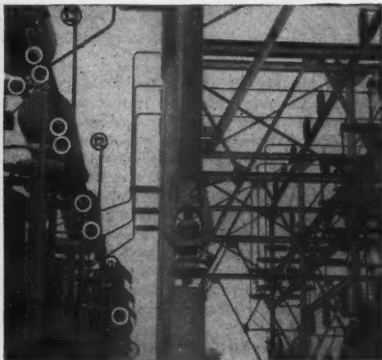
20100 ST. CLAIR AVE. • CLEVELAND 17, OHIO

"CLEVELANDS" Save More . . . Because They Do More

NO SERVICE INTERRUPTION after bad transformer flare-up



Mulsifyre Projectors (in circles) on Mulsifyre System at Dayton Power and Light Company.



Immediate action averts disaster

"PRACTICALLY NO DAMAGE FROM FIRE", was the report of The Dayton Power & Light Co. on a serious flare-up that resulted from an electrical failure on one of their substation step-up transformers. 35 FOOT FLAMES were extinguished so quickly by the Mulsifyre System that adjacent

transformers were unaffected. THIS IMMEDIATE, DEPENDABLE ACTION is the reason why leading utilities have chosen Grinnell Mulsifyre Systems for protecting over 10,000,000 KVA of transformer capacity and many other installations of similar oil-filled equipment.

MULSIFYRE SYSTEMS operate on the principle of emulsifying blazing oil with a driving spray of water. The oil is turned into a liquid which is incapable of burning. Fire is extinguished in a few seconds and reignition is prevented.

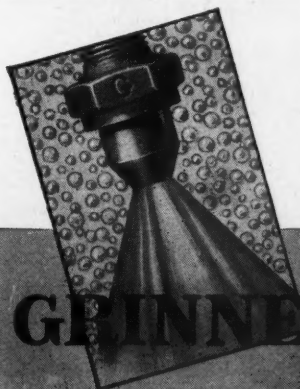
Complete separation of water and oil takes place in a few hours . . . leaves oil undamaged.

There is absolutely no conductivity along the discharge of a Mulsifyre projector when

spray strikes conductors carrying high voltages.

Mulsifyre Systems are permanently installed . . . they operate automatically or manually.

Recommended by Underwriters' Laboratories for use in extinguishing fires in flammable oils immiscible with water, wherever such oil is a fire hazard - in transformers and other oil-filled electrical equipment.



See that your equipment has this 24-hour-a-day protection, before fire strikes. Experienced Grinnell engineers will help you plan protection for your specific needs.

GRINNELL  COMPANY

Executive Offices, Providence 1, R. I.
Branch offices in principal cities.

GRINNELL *Mulsifyre*
AUTOMATIC FIRE PROTECTION

From DREAM to STEAM

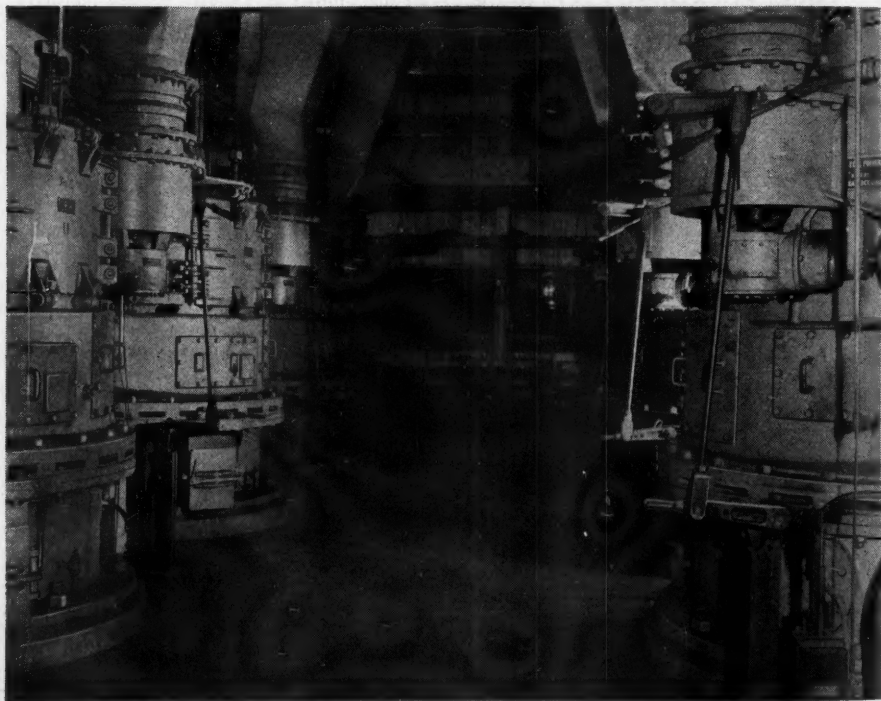
25-Year Vision of Ohio Electrical Pioneer
Became Reality in New R. E. Burger Station

On January 21, 1944, The Ohio Public Service Company officially started up and dedicated its new modern generating station at Dilles Bottom, Ohio, on the Ohio River. It was a momentous occasion for officials and engineers of OPS. A dream had come true. More than 20 years of foresight and planning had at last become a reality. No less an achievement was the excellent service rendered by the existing plants on the system during this long period of planning, and especially during the past few years, when the demand for electric power was greater than ever.

Completion of the new station was a particularly significant climax for R. E. Burger, President of Cities Service Power & Light Company. Pioneering the idea of building a central station on the site, he saw his vision

and judgment vindicated as the steam throttle was opened for the first time and the 62,500-Kw turbo-generator began to hum in the plant appropriately named in his honor. It was a proud day, too, for the men who had surmounted a long chain of war-time obstacles in constructing the plant that, according to OPS President, T. O. Kennedy, "guarantees ample electricity for all war manufacturing needs in our territory. After the war, it insures all persons on our Company's lines an abundance of power enabling them to make full use of the many electrical servants—the labor-saving devices they will be able to obtain".

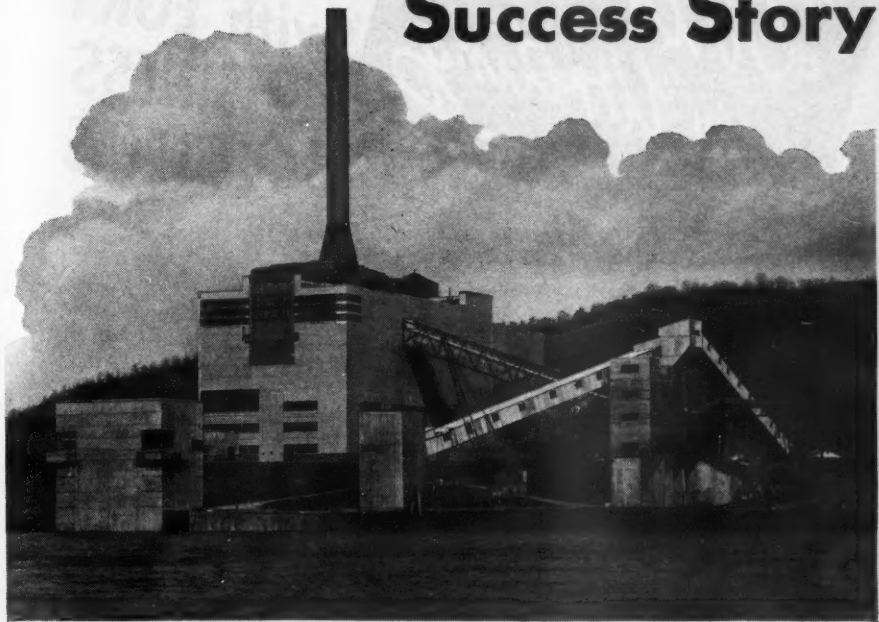
Babcock & Wilcox, in saluting this OPS achievement, is proud to have had a part in it by furnishing the power behind the power—the steam-generating equipment.



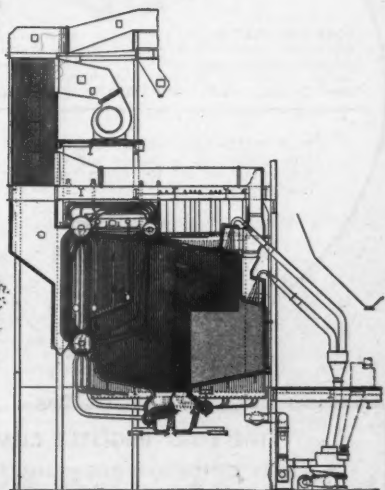
Three B & W Type E Pulverizers serve each of the Stirling Boilers.

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...a 500 Million KWH. Success Story



Two Stirling Boilers supply the steam needed at R. E. Burger Station to generate an annual power output of 500 million kwh. Each boiler has a capacity of 350,000 lb. of steam per hr. The two boilers supply the steam needed by the 62,500 kw. turbo-generator.



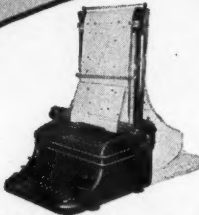
The BABCOCK & WILCOX Co.

85 Liberty Street, New York 6, N. Y.

*"Do it
in Writing"*

**with EGRY
BUSINESS
SYSTEMS**

This slogan has been identified with Egrý's efficient methods of recording initial records since 1893. The Egrý Business Systems shown below have not only been responsible for greatly accelerating the making of handwritten and typed records, but also for the elimination of mistakes caused by carelessness and temptation. Many concerns in the utilities industry have found it profitable to use Egrý Business Systems. Write for literature. Or a practical demonstration may be arranged in your own office at your convenience. It will cost you nothing to investigate.



EGRY SPEED-FEED may be attached to any standard typewriter in one minute, without change in construction or operation, and with Egrý Continuous Forms, practically doubles the output of the operator since all her time becomes productive.



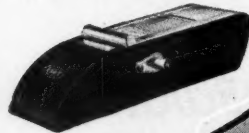
EGRY CONTINUOUS FORMS enable operators to write more forms in less time because they eliminate interleaving and removing loose forms and loose carbons, and many other time-consuming manual operations.



EGRY ALLSET Forms are individually bound sets, interleaved with onetime carbons for immediate use for either typed or handwritten records.



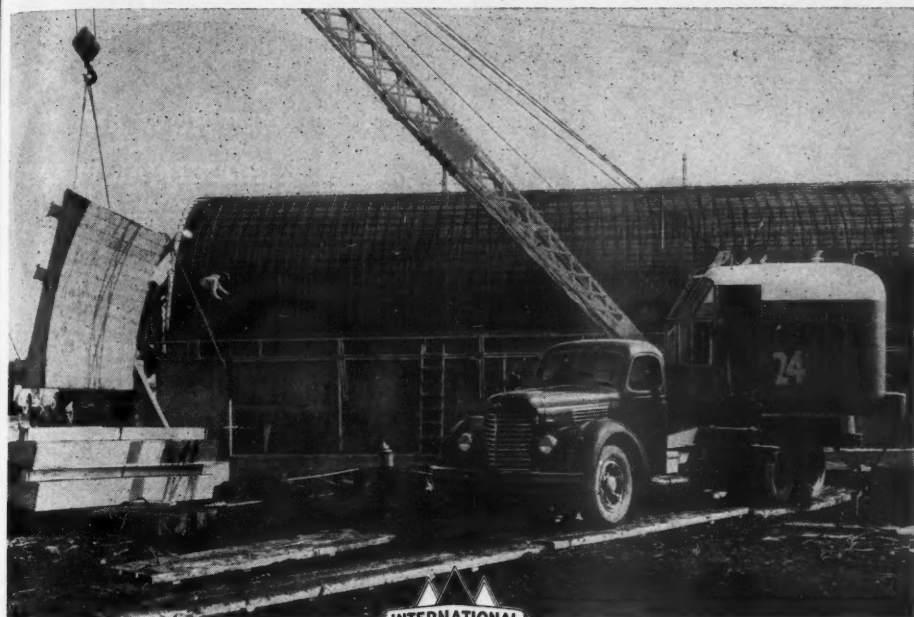
EGRY TRU-PAK speeds the writing of all handwritten records. Eliminates mistakes and assures positive control over all recorded transactions.



THE EGRY REGISTER COMPANY, DAYTON 2, OHIO, Dept. F-67

EGRY CONTINUOUS FORMS LIMITED, King and Dufferin Sts., Toronto, Ontario, Canada

Egrý maintains sales agencies in all principal cities



INSTRUMENTS OF POWER

...So Common We Miss Their Meaning

AN instrument of power, the truck and crane above. We take them in our stride, these instruments of power, as we do almost all the amazing things about us. We see big, heavy-duty trucks at work on construction jobs, but we never stop and say: "There is a miracle of American ingenuity... an idea embodied in steel and rubber... there is power... American power that throws its full weight on the enemy."

The performance of American trucks, drivers, and truck service men, here on the home front, has been a real battle story through the war years. Trucks without number are old—too old, we would have said a few years ago. But they've gone on, these trucks, nursed by their drivers and coddled by service men. And their jobs have been done—the long, long list of jobs the Nation needs done when the chips are down.

Watch these old trucks—the heavy haulers! See how many of them wear the Triple-Diamond Emblem of International Harvester. . . . In the ten years before the war more Heavy-Duty Internationals were sold than any other make. The truck itself was the reason. The truck itself is still the reason—the rugged International Truck dependability that still enables these veterans to do a full day's work.

INTERNATIONAL HARVESTER COMPANY

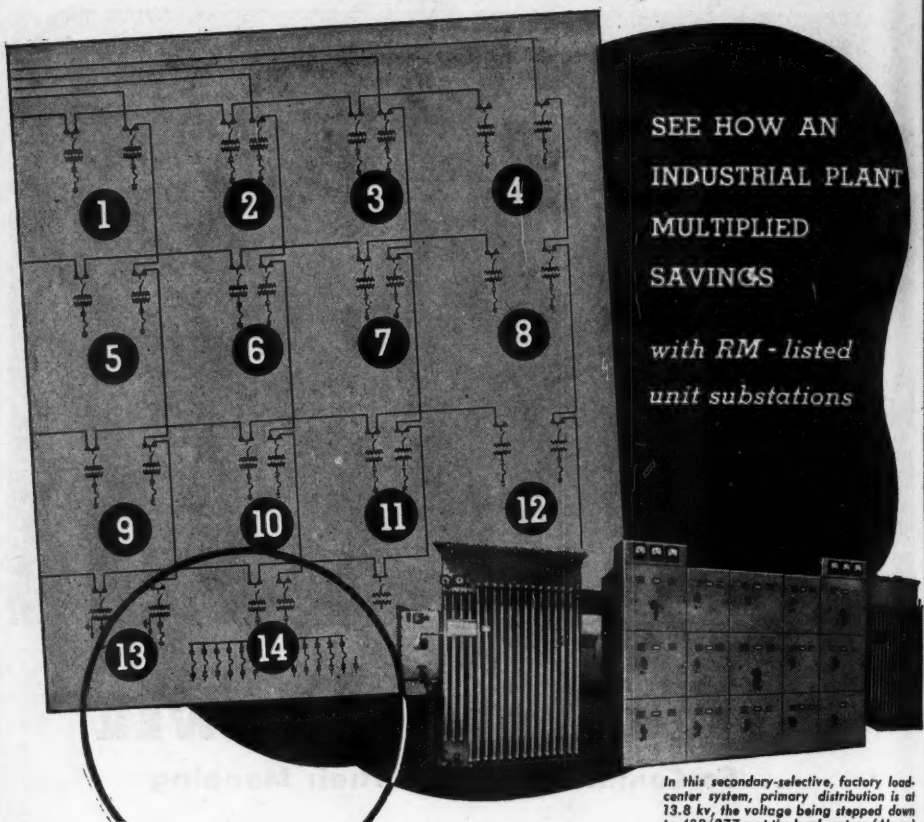


180 North Michigan Avenue
Chicago 1, Illinois

New Trucks: The government has authorized the manufacture of a limited quantity of International Trucks for civilian hauling. See your International Dealer or Branch for valuable help in making your application.

INTERNATIONAL Trucks

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SEE HOW AN
INDUSTRIAL PLANT
MULTIPLIED
SAVINGS

with RM-listed
unit substations

In this secondary-selective, factory load-center system, primary distribution is at 13.8 kv, the voltage being stepped down to 480/277 v at the load centers. (Above) —typical double-ended unit substation (1000 kva.).

Is repetitive manufacture actually proving its value to buyers of power apparatus? Here's an industrial example that shows what can be accomplished when systems are planned with RM-listed units in mind.

To serve the 450-acre floor area of an important aircraft plant, electric power is distributed by a load-center system. Sixteen "double-ended" G-E unit substations, aggregating 30,000 kva, form a uniform and repetitive pattern throughout.

Vitally important savings in time and in materials were achieved in this installation. They were made possible to a considerable degree by the use of standard units. The first

cost of each substation was significantly lower than if each had required special design and custom manufacture. Uniformity brought down installation and service costs as well. All the gains were greater per unit, because so many units were supplied. Many installations like this will bring about lower market prices.

Repetitive manufacture will also help make possible similar savings for light and power companies. In planning tomorrow's distribution systems, why not investigate the opportunities for similar economies in time and expense. You'll find G.E. ready to work with you all the way. General Electric Company, Schenectady 5, N. Y.

GENERAL ELECTRIC

801-12085-170

Buy all the BONDS you can
—and keep all you buy

Your Gas

+



= Profitable Results

Because you get maximum sulphur removal per pound of oxide. Lavino Activated Oxide is made especially for maximum activity and capacity, maximum trace removal and shock resistance. Comparing cost, performance and savings, we believe Lavino Activated Oxide has no close rival.

For more information about its remarkable record, just write a note on your letterhead to

E. J. LAVINO AND COMPANY
1528 Walnut St., Philadelphia 2, Pa.

DAVEY TREE TRIMMING SERVICE



1846

1923

JOHN DAVEY

Founder of Tree Surgery

DAVEY

TREE TRIMMING FOR LINE CLEARANCE

Always use dependable Davey Service

DAVEY TREE EXPERT CO.

KENT, OHIO

DAVEY TREE SERVICE

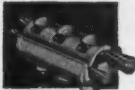
Why dig through a PILE of Catalogs?

Find the
Fitting
you need,
quickly—



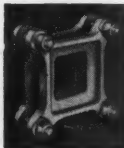
in the COMPLETE line

If you have a Penn-Union Catalog, you can instantly find practically every good type of conductor fitting. These few can only suggest the variety:



Universal Clamps to take a large range of conductor sizes; with 1, 2, 3, 4 or more bolts.

L-M Elbows, with compression units giving a dependable grip on both conductors. Also Straight Connectors and Tees with same contact units.



Bus Bar Clamps for installation without drilling bus. Single and multiple. Also bus supports—various types.

Clamp Type Straight Connectors and Reducers, Elbows, Tees, Terminals, Stud Connectors, etc.



Jack-Knife connectors for simple and easy disconnection of motor leads, etc. Spring action—self locking.

Vi-Tite Terminals for quick installation and easy taping. Also sleeve type terminals, screw type, shrink fit, etc. etc.



Splicing Sleeves, Figure 8 and Oval, seamless tubing—also split tinned sleeves. High conductivity copper; close dimensions.

Preferred by the largest utilities and electrical manufacturers—because they have found that "Penn-Union" on a fitting is their best guarantee of Dependability. Write for Catalog.

PENN-UNION ELECTRIC CORPORATION
ERIE, PA.

Sold by Leading Jobbers

PENN-UNION

CONDUCTOR FITTINGS

Sangamo Capacitors Can Take It!

Climatic conditions, under which various communications equipments are operated, vary from the sub-zero temperatures of the northernmost climates to the tropical temperatures encountered at the equator. Conditions of humidity cover the extreme range; from the dry arid regions of the many deserts, to the almost 100% humidity in tropical and sub-tropical atolls.

It has been the problem of Sangamo engineers to design and produce capacitors that perform faithfully under these varying conditions, and so assure vitally needed communications at all times.

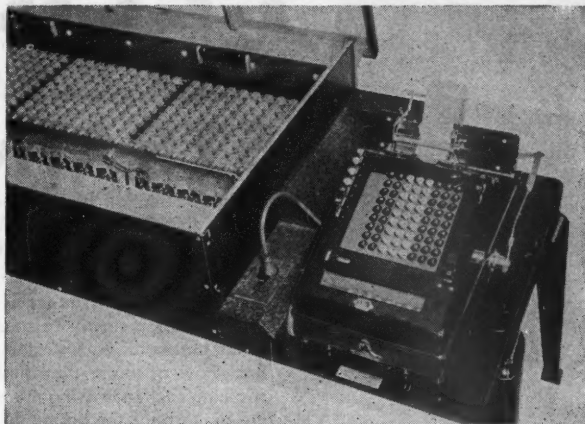
The wide variety of capacitors illustrated insures the availability of the proper unit for almost any mica capacitor requirement.

**SANGAMO ELECTRIC
COMPANY**
SPRINGFIELD, ILLINOIS

BRING YOUR BILL ANALYSES UP TO DATE

You can save 50% in time and money with

THE ONE-STEP METHOD



OF BILL ANALYSIS

ALL but current bill frequency data has been rendered obsolete by the marked increase in kilowatt-hour sales. How much of this load will you retain?

Now is the time to bring your bill analyses up to date. In addition to a knowledge of the existing situation, certain trends may be disclosed which will be of considerable value to you in planning your post-war rate and promotional programs.

The One-Step Method of Bill Analysis is ideally suited to meet the needs of this problem. It does away with the necessity for temporarily acquiring, training and supervising a large clerical force. Our experienced staff plus our specially designed Bill Frequency Analyzer machines can turn out the job in a few days and at the cost of only a small fraction of a cent per item.

We will be glad to tell you more in detail about this accurate, rapid and economical method for obtaining a picture of your customer usage situation. Write for a copy of the booklet "*The One-Step Method of Bill Analysis*."

Recording & Statistical Corporation

Utilities Division

102 Maiden Lane, New York 5, N. Y.

Boston

Chicago

Detroit

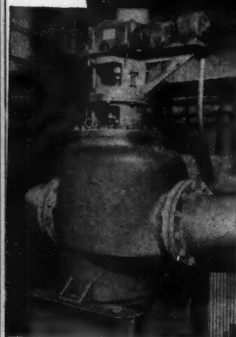
Montreal

Toronto

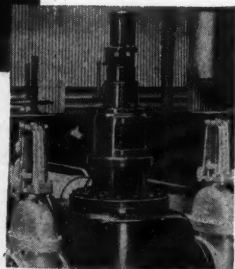
Service water clears itself in



How the Elliott self-cleaning strainer is installed. Water goes straight through, foreign matter caught and ejected downwards.



One of three large self-cleaning strainers for bearing cooling water, in a central station.



One of five Elliott 14" self-cleaning strainers in a hydro plant. They protect fire pumps, transformer cooling coils and generator cooling coils.

ELLIOTT SELF CLEANING STRAINERS

Without attention beyond occasional supervision, this unit will strain incoming water, remove and eject abrasive or other foreign matter, and deliver clear water for service use.

The straining process is continuous. A geared motor slowly rotates a sealing box which blocks off each straining section in turn. Back-flow of water then flushes the isolated straining section, driving the entrained impurities out through the bottom of the unit, and the cleared section again takes up its straining job.

The only bearing exposed to grit-laden water is the lower bearing of the rotating element. This is a cutless rubber bearing, immune to damage and easily replaceable should it become necessary. Elliott self-cleaning strainers serve many utilities especially where large quantities of relatively fine dirt must be removed.

Where manual cleaning is permissible, Elliott twin strainers will also give non-stop service, one cylinder always being in operation while the other is shut down for removal and dumping of the strainer basket.

Use our wide experience in meeting your straining needs. Talk it over with the Elliott man.



ELLIOTT COMPANY

Accessories Department

JEANNETTE, PA.

DISTRICT OFFICES IN PRINCIPAL CITIES

TEAM TURBINES • GENERATORS • MOTORS • CONDENSERS
FEEDWATER HEATERS AND DEAERATORS • STEAM JET EJECTORS
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Utilities Almanack

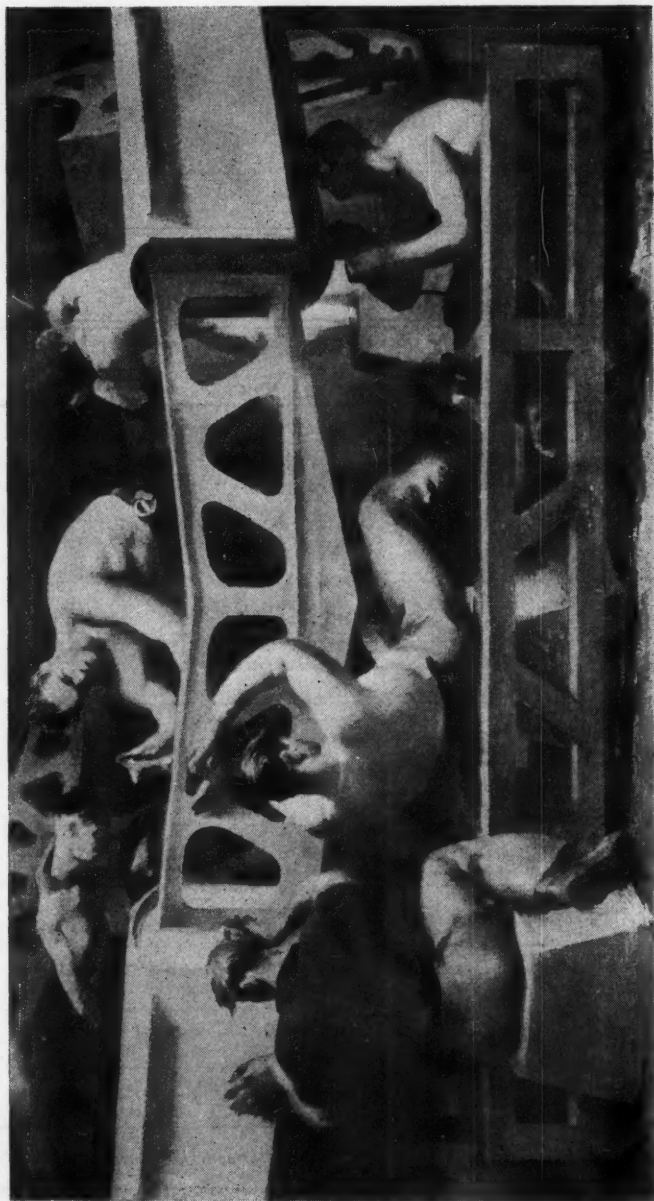
Due to wartime travel restriction, conventions listed are subject to cancellation.



JUNE



7	T ^a	† Municipal Finance Officers of the United States and Canada will hold regional meeting, Boise, Ida., June 22, 23, 1945.	
8	F	† American Water Works Association, New Jersey Section, holds meeting, 1945.	
9	S ^a	† Chamber of Commerce of the United States will hold board meeting, Washington, D. C., June 29, 30, 1945.	☉
10	S	† National Rural Electric Cooperative Association will hold meeting of national board of directors, Chicago, Ill., July 17, 18, 1945.	
11	M	† American Water Works Association, Michigan Section, will hold meeting, Flint, Mich., Sept. 12, 13, 1945.	
12	T ^a	† Institution of Gas Engineers starts annual meeting, London, England, 1945.	
13	W	† Indiana Section of American Water Works Association starts regional meeting, Evansville, Ind., 1945.	
14	T ^a	† Central Western Shippers Advisory Board holds meeting, Omaha, Neb., 1945.	
15	F	† Interstate Oil Compact Commission opens quarterly meeting, Oklahoma City, Okla., 1945.	
16	S ^a	† Chamber of Commerce of the United States will hold board meeting, Washington, D. C., Sept. 21, 22, 1945.	
17	S	† American Water Works Association, Southwest Section, will hold meeting, Oct. 15-17, 1945.	☾
18	M	† American Society of Mechanical Engineers starts semiannual meeting, Chicago, Ill., 1945.	
19	T ^a	† Canadian Gas Association opens annual conference, Murray Bay, Quebec, 1945.	
20	W	† American Water Works Association, North Carolina Section, will hold meeting, Charlotte, N. C., Nov. 5-7, 1945.	



Courtesy of Ferargil Galleries

"Wings of Tomorrow" (Aeroplane Factory)

By BARGE MILLER

Elsie Hofner, N. Y.

Public Utilities

FORTNIGHTLY

VOL. XXXV; No. 12



JUNE 7, 1945

Let's Have Both Sides of This Propaganda Argument

There is entirely too much hypocrisy, in the opinion of this author, in the hackneyed complaint that business-managed utility companies engage in "propaganda" while their political critics engage in the same activity even more intensively and continuously. Why not admit, however, that both sides are out to advance a given viewpoint and let the public judge the merits?

By TED CROSBY

IT is, perhaps, a trite thing to say that "propaganda" has become a much-abused word. A cynical, somewhat smart aleck definition of "propaganda" as most Americans have come to understand it would be simply "the other fellow's argument." We would never dream, of course, of calling our own argument—that is, the argument for our own side or particular point of view—"propaganda." We would prefer to call it a "factual statement of the real situation," or, perhaps,

an "educational campaign of enlightenment," or some other similar exercise in the slippery art of semantics.

And yet if we want to be honest with ourselves, or with others, we would have to admit that, all question of truthful content to one side, our arguments, as well as our opponent's arguments, are both propaganda and perhaps recognized as such by any intelligent person who bothers to listen to either of us. A refusal to admit that means either we are kidding ourselves

PUBLIC UTILITIES FORTNIGHTLY

or trying to kid the public—more often the latter.

"Propaganda," in the better sense of the term, according to all accurate, unemotional definitions in any reputable dictionary, merely means systematized argument or any plan for favorable presentation of a particular private theory or doctrine. No issue of truth is involved (incidentally, smart propaganda is usually scrupulously truthful, as far as it goes)—merely a recognition that propaganda is angled from an interested point of view, as distinguished from a purely objective reportorial or disinterested point of view.

It's like a lawyer's argument in court. Nobody expects the lawyer to sum up the authorities for the other side. Sometimes really clever lawyers purport to do so, which can be a subtle form of propaganda in itself. But, generally, the average lawyer leaves that job for the opposition's counsel.

Propaganda is a perfectly respectable word in other lands and languages. There is no invidious connotation. True, some ministers of propaganda, such as Dr. Goebbels, the goggle-eyed gargoyle of Berlin, have used the word as a cloak to cover scientific mass lie manufacturing. But others, including allied and friendly nations, and even church authorities, consider it as simply a designation similar to our own American "press relations" or "information division" departments of government.

So much for definition. As a practical matter, it is probably too much to expect that propaganda, as a word, will ever become respectable in common American parlance. But by understanding its use as a smear word, and

the technique which it often covers up, we can come to a more forthright realization of just what the score is in the contest of publicity now going on in the United States to wean the American people away from their traditional sympathy for free private enterprise in business-managed public utility companies in favor of a socialized or government-managed system of public utility service, subsidized by the taxpayer.

When we come right down to cases, everybody is engaged in propaganda of some sort or another every day of his life. From the cradle to the grave—or, specifically, from the overfed baby crying for more milk to the often phoney epitaph of love, affection, and piety graven on our tombstones—we are all constantly trying to "put over" our point of view—attempting to sell somebody our ideas. We may be entirely sincere and unselfish in these efforts. They may be tactlessly crude or deliciously subtle. But the fact remains that every time we make an attempt to influence the thinking or viewpoints of others, we are to that extent engaged in propaganda.

So what? Well, for one thing, if we look at it in this way, we can quickly scrape away an unhealthy overgrowth of hypocrisy that has beclouded the issue of public ownership of public utilities in this country. We have heard the politicians say, since the days of the old Federal Trade Commission investigation of the thirties, that the electric utility industry in the United States has been engaged in a "systematic" or "concerted" or "widespread" or "well-organized" campaign of "propaganda" to defeat and discredit "the will of the people"—meaning, of course, public ownership.

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AGAIN, so what? Why shouldn't they? What's wrong with it? Who started it in the first place? Which side does the most of it? Is it wrong for an admittedly successful and useful industry to fight back through publicity channels in a life-or-death struggle to defend its own right to continue in existence?

Indeed, are the business-managed electric utility companies engaged *sufficiently* in counterpropaganda efforts to offset a movement designed to extinguish them? Are they doing *enough* propagandizing? Could it be much more effective?

Answers to plain, common-sense questions such as these dissolve the fiction of hypocrisy which proponents of socialized management of utility industries have assiduously built up around their use of the word "propaganda" and exclusively applied by them to the purely defensive, and often pitifully inadequate, efforts of business-managed companies to stay alive and continue to do business—the business of public service.

It cannot be stressed too much, however, that propaganda is a serious business in itself—requiring expert technique to get satisfactory results. The success of an executive of a business-managed utility—in the utility business

—does not of itself mean that he is equipped to engage in the rough-and-tumble of propaganda activity. It would be just as if a successful lawyer or doctor assumed that such professional experience equipped him to operate a business successfully.

TRUE, some executives on both sides of this public ownership controversy have become successful propagandists.

The late Wendell L. Willkie, who as president of the Commonwealth & Southern, took the publicity play right away from the astute Chairman Lilienthal of TVA, was a notable example. As for Chairman Lilienthal himself, the recent high compliment on his effectiveness as a propagandist by such an expert as Secretary of Interior Ickes speaks for itself. Not only has Chairman Lilienthal become a clever propagandist but he has built up an impressive system in the TVA for the same. Thus, money received by Chairman Lilienthal and others for their writings goes into a fund to defray the expenses of visiting celebrities from foreign countries, and so forth. (This is making one phase of propaganda pay for another phase of propaganda.)

One elementary truth concerning



“‘PROPAGANDA,’ in the better sense of the term, according to all accurate, unemotional definitions in any reputable dictionary, merely means systematized argument or any plan for favorable presentation of a particular private theory or doctrine. No issue of truth is involved (incidentally, smart propaganda is usually scrupulously truthful, as far as it goes)—merely a recognition that propaganda is angled from an interested point of view, as distinguished from a purely objective reportorial or disinterested point of view.”

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propaganda activity which is not generally understood is the fact that it cannot be measured in terms of dollars and cents. To bring this truism home to the public utility business, we can readily see that a business-managed company will have to spend a considerable amount of money, effort, and planning to get the same amount of publicity which government in business gets for nothing. It is senseless to quibble over this situation or say it is unfair. It is simply a fact.

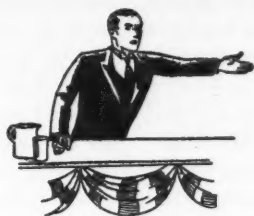
Why is it a fact? Because government in business is still relatively new and experimental in this land of ours with its traditional system of private enterprise and, of course, news makes publicity come easy. If the situation were reversed, if most of our business were socialized, then an experiment in *private* enterprise would be news. For a concrete example of this, just imagine the socialized government in Soviet Russia announcing that after the war it would permit certain military heroes, as a reward for their gallantry, to own private property and go into private business. Such a departure from the established pattern of Russian government would make headlines throughout the world.

COMING back to our own country, it is not surprising, therefore, that when the head of our first great Federal venture into the power business—the Tennessee Valley Authority—sums up his experience in a readable and graphic account, it becomes a best seller. As citizens and taxpayers, most of us are interested in TVA, whether we approve the venture or otherwise. Hence, Mr. Lilienthal gets not only free publicity for his TVA propa-

ganda, but actually gets paid for it. An executive of a business-managed company, attempting to get anywhere near a relative amount of publicity for his company's position and accomplishments, would have to spend thousands of dollars, engage the very finest literary talent, and even then it is doubtful if he could make the thing come off. This is because mere successful business operation, as such, in this country is commonplace and therefore not exciting. Would that it were otherwise.

Not to labor this point that one man's propaganda is another man's best seller, it would seem to follow that the safest thing for a business-managed private company, fighting for its life, is to come right out and lay the cards on the table and admit that it has to spend that kind of money to match the natural publicity advantage enjoyed by rival government forces attempting to socialize the industry. The inherent sense of fair play of the American public is likely to respond to such frankness and recognize the natural disadvantage under which any particular business labors when it has to fight its own government to stay alive. If the point is made clear enough, the average private citizen will even sympathize with the "underdog" and say to himself (with fond visions of his own little business in the back of his head): "There, but for the grace of God, go I."

THE people of the state of Washington were not shocked when the Federal Power Commission on two occasions announced, after some investigation, the amounts which business-managed power companies in that state had spent in political campaigns



Propaganda As Tool of Public Ownership Movement

"PROPAGANDA is the life and breath of the public ownership movement in this country. It is a most satisfactory tool, considering that it is the principal implement these manipulators possess. As long as they wield it diligently they will have no particular need for precisely factual justification, which is always dreadfully dull even where it is true and accurate."

involving an issue concerning their own right to continue in existence. Some of them were a little shocked when the FPC—a presumably "quasi judicial" agency of the Federal government—released its findings on the eve of the election—interpreted in some quarters as being a last-minute effort by an arm of the Federal government to sway a state election. (If that was the intention, it certainly backfired, since the election went the other way.)

The people of the state of Washington know, or at least they voted as if they were fully aware of, the unequal advantages of government as compared with business company publicity; they know that all the money is not being spent on one side. When the FPC, after announcing the business-managed company expenditures, pointed out that it had no jurisdiction to investigate similar expenditures by government bodies, a good many citizens of the state simply guffawed and a handsome majority

of them voted accordingly. They knew and heard often enough of government propagandists carried on the payroll under other titles. The Washington voters, by and large, were well aware, for example, that an avowed socialist politician being carried on the Bonneville payroll as a "consultant" performed the exclusive function of stumping the state—making speeches and writing articles in favor of public ownership.

YES, the people of Washington finally understood what the score was and the honesty of the business-managed companies in admitting that they were fighting for their lives and willing to put up some chips in making a real scrap of it, really paid dividends. The question arises whether a similar policy of frankness and honesty of purpose wouldn't assist business-managed companies elsewhere which have similar problems. Today, that means

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just about every state in the union, except Tennessee and Nebraska, where private enterprise in the electric power business has been virtually exterminated.

What this writer is driving at is that the business-managed companies ought to go to school—ought to go to a propaganda school. They might well start in by taking lessons from their own opponents. True, they can't hope to overcome the natural advantage of novelty, already mentioned, enjoyed by the socialistic camp, and they should not blame the government people for making full use of that advantage. But such novelty wears itself out quickly enough under increasing tax consciousness. And there may well be compensating natural advantages in the status of business-managed companies which can be profitably exploited.

The "underdog" status itself is no mean concept to conjure with, for favorable publicity purposes. When the war is over and it becomes safe once more for private citizens to tell an oppressive government where to get off without having their patriotism challenged, there is quite likely to be an increasing cheering section for the little Davids who have the spunk to go after bureaucratic Goliaths, and—what is more important—who see that the blow-by-blow accounts of the various bouts get to the attention of the people.

SOME of the tricks used by the manipulators of the public ownership racket (and it is a sweet racket for an increasing army of government job-holders—another fact, incidentally, which could stand some publicity) are well worth study if not imitation. One obvious lesson which the business-man-

aged companies could learn is that the government-public ownership boys never waste time on defense. The defensive position, from a propaganda angle, is too closely linked in the public mind with an alibi. When you hear the very word "alibi" you unconsciously pass a certain amount of judgment on the party associated with the word.

As the old forthright western judge of pioneer days used to say about prisoners brought up on charges in criminal court: "Guilty? Of course they're guilty. What would they be here for if they weren't guilty?"

No, you will generally notice that the government-public ownership propagandist rarely stops to answer charges defensively. He ignores them as blithely as the ham actor overlooks the overripe vegetation and goes on singing his piece, banging away at his arguments. It gets results, too.

Propaganda is the life and breath of the public ownership movement in this country. It is a most satisfactory tool, considering that it is the principal implement these manipulators possess. As long as they wield it diligently they will have no particular need for precisely factual justification, which is always dreadfully dull even where it is true and accurate.

IT is of the very nature of things that government-public ownership—a socialistic form in a country still predominantly capitalist—must start out as a pressure group with propaganda as its prophet. It would have to be the same way if, as, and when private enterprise attempts to start out as a serious movement in a country predominantly socialized, such as Soviet Russia.

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Let's dissect the more generally used devices, exemplified by this propaganda technique. Seven categories come to mind:

1. Name calling.
2. Glittering generalities.
3. Transfer.
4. Testimonials.
5. Plain folks.
6. Card stacking.
7. The band wagon.

These are all improvised labels and we shall see presently what is meant by each.

All of these devices are in constant use by the public ownership propagandists with one, the band wagon device, being employed most generally at the present time.

"NAME calling" by the government-public ownership promoters is an old and time-honored device which that classical arch propagandist, Cicero, used so effectively, even when he was actually pretending to condemn its very use. (The reference is to the "Orations against Catalina.") The idea is that a bad label will tempt the superficial to reject, or accept, something without further examination of the evidence—and all too often they do. In referring to their opposition they always refer to "monopolies" and "Power Trust" and "Wall Street." It is used graphically when power companies are caricatured

as bloated, silk-hatted capitalists, generally shown with one foot on the neck of a farmer or worker. The philosophers of old called this method *argumentum ad hominem*.

To put the reverse English on the "name-calling" device, one has only to point out that Wall Street financiers and Chicago bond brokers are behind the scenes in every government-public ownership situation and favored firms of engineers and lawyers who are of the "true faith" are always on hand for their share of the "take."

The "glittering generality" is used generously in the government-public ownership routine because it associates a program with a "virtue" word to obtain acceptance for the program without examination of the evidence. Power is always referred to as "power for the people." Public ownership is always "in the public interest" or "for the public welfare." (As Hitler rightly said in "Mein Kampf": "Shout it often and loud enough, they'll believe it.") Any trickle of water that does not splash against a dam is called "power going to waste." The zeal with which the government-public ownership groups insist that every babbling brook must be dammed leads one to wonder how they have overlooked the power going to waste in rainfall and have neglected to advocate horizontal dams to generate kilowatts from cloudbursts.



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LET'S look at the "glittering generality" from the reverse side. Out in the state of Washington the ranks of the government-public ownership standard-bearers are swelled by officials of the state grange, an organization of farmers. Now I submit that of all the classes in this country, the farmer is the farthest, *sui generis*, from collectivism. The prime instance of a natural resource is the land, but to suggest that all farms should revert to the public would be to risk tar and feathers. So we must conclude that these grange leaders, hot for collective kilowatts, are not really in favor of government-public ownership—not by a dam site! Perhaps to them, public ownership is merely the cracker barrel in the general store. But they would be very indignant, indeed, if they found the general store proprietor helping himself to the contents of their bulging barns. The obvious problem here for business-managed companies is to identify their plight under government persecutions with the figurative American Kulak fighting off a Federal "collectivist" agent. It can be done.

The "transfer" device carries the prestige and sanction of something respected over to something else in order to make the latter acceptable. Government-public ownership is called "true democracy." If the government-public ownership forces win an election the vote is called "the will of the people." If government-public ownership is defeated in an election, then the result is termed, "the wishes of the people have been thwarted."

AN example of the use of the "transfer" device is seen in the recent statement of Dr. Paul Raver, Adminis-

trator of the Bonneville Administration, who said, "Our task is to guard and develop these government-public projects so as to make them a shining example of free enterprise in a free democracy." The attempt of the government-public ownership propagandists to take over the term "free enterprise" to describe government-public ownership projects smacks of plagiarism. Perhaps they have their tongues in their cheeks, but you can't blame them for trying.

"Free democracy," indeed! Who elected Dr. Raver to office? Who elected his boss, Secretary of Interior Ickes, to office, for that matter? What right have the people of the Northwest to vote on matters and policies affecting operation of the great Federal projects in that area? The people of Washington already know well enough that they have nothing to say on the matter and that Dr. Raver is the hired local representative of an absentee management, centralized in Washington, which controls the biggest power trust today. They know that the old Wall Street octopus has grown up and changed his address to Washington, D. C.

Another cute use of the "transfer" idea is the association of government-public power production with mellifluous multipurpose public works, such as navigation improvement, flood control, irrigation, reforestation, and so forth. You can't beat this combination. Trying to put up an argument against the desirability of such things as flood control is like trying to argue against the Beatitudes or the Ten Commandments. It stamps you as a sinner and a heretic.

These great rivers, say the government-public ownership proponents, refer to the Tennessee, Missouri, or

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Government-public Ownership As True Democracy

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the Columbia or other riversheds, which must be "integrally developed" to protect life, property, and insure the priceless heritage of arable acres of productive farm soil. This pretty picture of partnership between fine public improvements and allegedly "incidental" power generally turns out in practice to be something like the famous 50-50 recipe for "horse and rabbit stew." You use one horse and one rabbit.

The farmers in the Central valley section of California were sold on such a glowing picture of reclamation, and after Federal spending of millions of dollars the farmers still had, at this writing, not received a drop of irrigation service. The primary objective of reclamation which the local people loudly approved turned out to be primarily a power project. They asked for water and they got kilowatts. If you don't think they are still burning about it, you might go visiting in the Central valley section.

The reverse of the "transfer" technique in this case would be to point out, where it can be pointed out, how much cheaper and better river control work can be accomplished without the magnificent obsession of making the power tail wag the entire dog of basin development. Also, some farmers and local citizens might be interested in how much *better* reclamation and flood-control service they would get for *our* money if Federal officials were to *concentrate on such government services* and leave the incidental power, under proper supervision, to business-managed companies which have made a successful and useful job of distributing it for the "public welfare." (This is one argument, incidentally, which seems to have been explored hardly at all.)

NEXT, we have the "testimonial" device. This consists in having some respected (or hated) person say that a given idea or program is good

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(or bad). The government-public ownership routine generally does this by quoting Doctor So and So concerning the desirability and feasibility of some government-public ownership project. The most prominent "doctor" available is the best bet for this. But, in a pinch, the "doctor" may be an obscure ex-evangelist or backwater college professor, or legal eagle of some county seat, or even a reasonably honest veterinarian, if he comes from far enough away—preferably a foreign country.

The idea, to use a flip phrase current in Washington, D. C., propaganda circles, is to "impress the local yokels." Mediocre engineers, who may not have been able to make any notable success in their own professional practice, can be shined up as "famous engineering authorities and consultants." When they pontificate at crossroad gatherings, the smart thing is to have the sympathetic press representatives on hand (with camera and plenty of flash bulbs) to drool with fervor over the great man bringing the politico-economic truths down from Mt. Sinai (somewhere near Washington, D. C., these days, no doubt).

The "plain folks" device is another neat item. Here the propagandist attempts to convince the public that he and his ideas are good because they are "of the people." "Join with us," he pleads, "we are not silk-hatted financiers, but just plain folks like you. We wouldn't do you wrong. Walk right in." This goes over big with the right people. Get an extra-size collar, skip the shave, and borrow a red handkerchief to mop a nervous brow. The boys in Washington, D. C., know all about this one and can tell you just how to use it to best advantage.

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THESE homespun economists make a point of calling attention to the published salaries of utility executives. Do not, of course, give them the benefit of income taxes nor the right to their records for years of experience and their proven ability. Avoid any allusion to your own bank account or to the size of "fees" derived from various phases of government-public ownership operations with "other people's money."

"Card stacking" is also frequently employed. This device involves the selection and use of alleged facts or half-truths to give the best or worst possible slant. ("Angling" is the trade name for this in the newspaper game.) For an example, let's take an excerpt from an editorial in a Washington state farm paper, which devotes considerable space to subjects far removed from the agricultural field, such as government-public ownership. This includes vituperative attacks on the Canadian Shipshaw project.

The editorial says, among other things: "Public power in the state of Washington sold 3,293,353,541 kilowatt hours of electricity for \$16,878,571.91, in the first ten months of 1942. The private utilities sold 1,820,153,576 kilowatt hours for \$23,327,343.78 in the same period. Public power sold 1½ billion kilowatt hours *MORE* than private power for \$6,448,763.81 *less money!*" The reason for this disparity is studiously ignored. The reason, of course, is that practically all of the public power was sold to war industries at typically low rates made possible by high load factors. The business-managed companies sold a large amount of their output for such low factor loads as residential loads. It's like comparing a chestnut horse to a horse chestnut.

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But it works pretty well at times—if it's not overworked.

Now we come to the "band wagon"—a real trump card. "Everybody's doing it." Using this device the propagandist purports to show that the trend is toward his program and that everyone ought to get on the band wagon. Pull out all the stops. Stampede them. Make them feel ashamed of themselves, if not downright ignoramuses for even daring to question the proposition.

Snob appeal works wonders in pushing the band wagon along. Quote liberally from radical Harvard or Columbia professors and government bigshots. But don't suggest that the sucker try to figure it out for himself. It might backfire as it did in Washington state. Here's a fine example of the "band wagon." A government-public ownership publication says: "A writer in the *New York Herald Tribune* sees a rapid trend towards public ownership throughout the country. He cites many examples that emphasize that tendency. 'It becomes increasingly clear,' this writer says, 'that a sweep towards public ownership is setting in.' " The government-public ownership propagandist harps on the theme that public ownership is inevitable. As Hitler said: Keep up long enough and loud enough

and people will repeat it themselves without thinking.

FOR reverse action, the facts support a good case for the counterargument that business-managed companies are eventually inevitable. The government-public ownership movement reached epidemic proportions back in 1938 under the impetus of the financial handouts by the Public Works Administration to public bodies. In that year there were 218 municipal ownership elections held in the United States and of this number 108 resulted in the defeat of public ownership, and 110 were victories. In 1942, on the other hand, there were only 28 elections and in these public ownership scored 8 victories and suffered 16 defeats. One would hardly call that a trend towards government-public ownership. This would seem to show that government-public ownership has to bribe its way with "other people's money" whereas if the situation were left alone private enterprise would gain as it did before the days of PWA when municipal plants in the USA fell from a high peak never since approached.

From 1933 through 1937, government-public ownership won in 53 per cent of the elections. In the next five years, it only won 42 per cent of the elections—and its record in 1942 was



"GOVERNMENT-public ownership proposals have been defeated recently at El Paso and Port Arthur, Texas; Madison, Wisconsin; Reedsport, Oregon; Palatka, Florida; Fort Wayne, Indiana. They won no notable success anywhere in the last year. In the recent past, the wildest rabbit that was ever jerked out of the public power promotion hat, the \$175,000,000 Hood River, Oregon, PUD revenue bond issue, suffered a withering blast . . ."

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only 33 per cent. There's a trend for those who wish to see!

One of the best examples of the real trend is to be found in Adams county, Washington, because here we have a county where the PUD proposition has been put up to the same voters three different times—in 1938, 1940, and 1942. The PUD proposal was defeated all three times and the margin of defeat became greater with each succeeding election. In Yakima county, Washington, where a PUD had been set up, the commissioners of the district recently closed their office and went out of business.

IN 1941, a public ownership proposition went on the ballot in Spokane, Washington—virtually in the shadow of the Grand Coulee dam. A super-colossal propaganda campaign was staged by the public ownership promoters. Literature was brought into town by the truck load—radio was utilized—speakers stumped the precincts. Result: Government-public ownership was defeated by an overwhelming margin.

And so it goes throughout the nation. Government - public ownership proposals have been defeated recently at El Paso and Port Arthur, Texas; Madison, Wisconsin; Reedsport, Oregon; Palatka, Florida; Fort Wayne, Indiana. They won no notable success anywhere in the last year. In the recent past, the wildest rabbit that was ever jerked out of the public power promotion hat, the \$175,000,000 Hood River, Oregon, PUD revenue bond issue, suffered a withering blast from the rural residents of that county.

Talk about a trend! Even some of the PUD's already set up in Washington are losing heart. Last October, the

Klickitat County Public Utility District failed to appear in court in support of its condemnation suit against the Pacific Power & Light Company and Federal Judge Schwellenbach dismissed the suit. In November, the PUD officials of Thurston, Lewis, and Cowlitz counties abandoned attempts to acquire the properties of the Puget Sound Power & Light Company by piecemeal condemnation. But the boys never quit the offensive, even though it borders on the comical. Some of the PUD's in Washington, balked in their attempts to buy utility properties at their own prices, are now offering prices far below court awards with the threat that if the utilities do not accept they will build competing systems.

THE latest blow to government-public ownership, indirectly mentioned several times above, came with the defeat of Referendum 25 in the November election in the state of Washington. Conceived to create a super-duper PUD, a public ownership power trust, in the state of Washington and to obviate the necessity for further attempts to create PUD's by counties, this measure got the complete treatment from the public ownership propagandists. They were financed by a fund voted by the existing PUD's, many of which are not in actual operation and used moneys from tax levies to help put over the Referendum 25 drive.

A recent report of the Bonneville Administration showed that only 3.6 per cent of its output went to public ownership distribution agencies, including the city-owned systems of Seattle and Tacoma. It would seem that if this is any trend at all, it is the government-public ownership boys

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manning the pumps to keep their boat afloat.

Government-public ownership surveys by disinterested agencies confirm the fact that the "public ownership trend" in Washington state and elsewhere is a myth. Business in general and the business-managed utilities in particular ought to adopt the famous motto of Stonewall Jackson, "Never take counsel of your fears," and give the public ownership boys a prompt and thorough reception whenever they ask for attention.

REFERENCE here has been made to what business-managed companies in Washington have been able to accomplish by honest, forthright effort. But the battle is not won even in Washington state by any means. The govern-

ment-public ownership movement will go on there. Indeed, the heavy war-propped investment of the Federal government is going to be more in need than ever of political assistance when the shooting stops. It will naturally look to the government-public ownership movement to bail it out financially.

What has been done in Washington state can be done elsewhere. But it is important to remember that propaganda is a tough game, requiring expert technique. It is a continuous game and it is not cheap as long as the other side is well heeled with plentiful resources.

It is a critical game for private enterprise because government-public ownership plays for keeps. It can lose and lose again. Private enterprise only has to lose once.

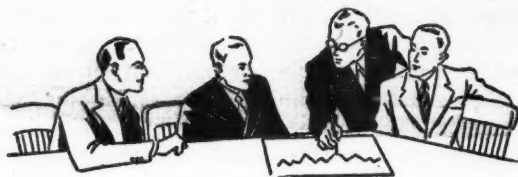
Profits and Wages

"A BRITISH educator from Oxford, L. P. Jacks, asks why the profit motive should be treated differently from the wage motive, in the exhortations of social reformers. If private profits are antisocial, because private and not communal, are high wages less antisocial or less private? Why condemn one and praise the other?

"If an investor, in risking his savings, tries to increase his profits from 4 per cent to 5 per cent, how is this different from a workman who tries to increase his wages from \$40 to \$50 a week? Each has the same motive and aim.

"The wage earner should remember that when government takes over business, the worker is no longer free to charge all the traffic will bear. He takes what government gives him. If you doubt this, just look at the condition of citizens and workmen in countries where state socialism became supreme. Government does not take over industry and leave the workman free. It's time for workers in the United States to think about this."

—EDITORIAL STATEMENT,
Industrial News Review.



Increasing the Life Span of Invested Capital

Reliable data together with trained talent for their interpretation now available to managers of business enterprises cannot, in the opinion of the author, help but result in greater security for the investor.

By ERNEST R. ABRAMS

CORPORATE managements and doctors of medicine have essentially the same objective. Both are concerned with the prolongation of life—one of invested capital and the other of humanity. And both must suffer the pangs of defeat if they fix immortality as their goal. Both are attempting to preserve something which, over the long term, inevitably perishes.

In "Problems of Ageing," Dr. Louis J. Dublin of the Metropolitan Life Insurance Company outlined the existing limitations of the medical profession in these terms:

The "life span," properly conceived, is the limit beyond which human life does not extend even in the most favorable conditions. . . . There is no evidence of some definite age at which all human life must necessarily cease, (but we are) led to the conclusion that the century mark is, for all practical purposes, the limit of the human life span.

Unfortunately, even so vague an estimate of the practical life span of invested capital is impossible today, although all concerned with its conserva-

tion will recognize that death eventually comes for it.

This may be a blessing in disguise. More than thirteen years ago, in discussing the pitfalls of investment, the late Frank Vanderlip said that if the Medici family of Florentine bankers, which ruled Tuscany in the 16th century and was probably the wealthiest of its time, had laid away \$400,000 at 4 per cent and had permitted it to compound, its worth at the close of 1932 would have exceeded that of all the gold in the world. So he suggested that the death of capital was, in one respect, a public benefit—that it kept the volume of accumulated savings from assuming unmanageable proportions and in tune with an ability to use it wisely.

That capital should constantly be destroyed in a country with the tremendous resources and growth potentialities of the U. S. should not be surprising. As the late Dr. David Friday remarked a decade ago, change is the

INCREASING THE LIFE SPAN OF INVESTED CAPITAL

only permanent condition of life, and changes occur with much more frequency, rapidity, and intensity in a growing and partially developed country than in one with a more mature economy and with more nearly exhausted natural resources.

THE impact of change upon invested capital has been evident throughout our entire national history. A century and a half ago, turnpikes and post roads provided a field for profitable investment, but when man-made waterways appeared in number, much of their traffic was lost to this new type of carrier. Close to a century ago, the interlacing of the industrial East with steam railroads, and their extension to the Middle West, brought slow but inevitable loss to investors in canals. In more recent years the development of cheap and efficient passenger cars, good roads, and long-distance trucking has cut deeply into railroad earnings, and the future of air transport holds promise of further adversities to investors in rail equities.

Nor has the timing of the impact of change followed a fixed schedule or an identical pattern. Although investment in American turnpikes proved profitable for less than a third of a century, ferries operating between Manhattan and Brooklyn, and between Manhattan and New Jersey, enjoyed substantial earnings for more than 100 years. Not until the first subway tunnel between Manhattan and Brooklyn was opened in January, 1908, and the first Hudson & Manhattan tube between Manhattan and New Jersey was placed in operation a month later, did they begin to slip. And it was not until the Holland vehicular tunnel was opened in No-

vember, 1927, that the North river ferries turned really sour.

BUT perhaps the prize instance of rapidity of the impact of change on an enterprise was that experienced by a British company which, having paid dividends for 129 consecutive years, failed within twelve months of its last dividend payment. The concern made hairpins; adequate reserves had not been accumulated, and when the gals bobbed their hair during World War I the business went "up the spout."

Evidence that American enterprise is constantly faced with vicissitudes may be found in the Dun & Bradstreet reports of business failures, and in the analyses of their data by the U. S. Department of Commerce and the National Industrial Conference Board. From these sources it appears that over the forty-four years ended with 1943, there was an average of 1,805,600 business enterprises active in the country each year. Of these an average of 372,400 concerns, or 20.7 per cent of the total, withdrew from active business annually for one reason or another, of which 4.4 per cent were the direct result of failures. Nor were all of them small businesses. The manufacture of automobiles has always called for the employment of substantial blocks of capital, yet, during this 44-year period, more than 50 automobile manufacturing concerns have disappeared from the rolls of active business or their corporate identities have been lost.

THE causes of change are practically limitless. Inventions, new techniques, population growth and shifts,

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merchandising innovations, shifts in the fickle climate of public wants and opinion, all have taken their toll of capital invested in long-established enterprises. Despite hostile legislation the spread of chain stores throughout the land, due to public acceptance of this economical method of retailing, has substantially reduced the number of independent units in numerous retail fields. The economies that can be achieved only through large-scale operations in such fields as the production of steel, copper, railway equipment, and heavy electrical equipment have forced the withdrawal of small independent manufacturers or their merging into larger enterprises.

The development of new devices, moreover, tends to destroy the demand for many of the old. No better illustration can be cited than the impact of the automobile on the horse-drawn vehicle. Solomon Fabricant states in his "Outputs of Manufacturing Industries" that the sale of buggies, carriages, and surries in the United States dropped from \$55,800,000 in 1904 to a mere \$110,000 in 1937—a decline of more than 99.8 per cent in a third of a century.

EVEN if total loss of invested capital does not result, the effect of the impact of change generally is the partial loss of investment, owing to the necessity of drastic alterations in capi-

tal structures. The history of American railroads has been one of repeated revision of capitalizations—sometimes voluntary, but more often compulsory—to bring them into line with current and prospective earning power. In the days before public regulation, when rates were dictated largely by what the traffic would bear, top-heavy debts and ill-conceived capital structures were not always troublesome. But when state and Federal commissions began pressing for lower rates, the elimination of rebates and similar questionable practices, and the introduction of more truly competitive conditions, lean years tended to bring on defaults and bankruptcy, which few rail systems in the country have avoided at some time during their corporate lives.

And although their operating subsidiaries were not so extravagantly financed, which makes them somewhat dissimilar to railroads, the stock market collapse of 1929 and the ensuing business depression forced the scaling down of the capital structures of numerous overextended public utility holding companies, even before August, 1935. After the Public Utility Act became law, of course, the SEC greatly accelerated holding company reorganization and dismemberment. That, however, is something else.

BUT the revision of capital structures and the scaling down of

TABLE I
(Thousands of Dollars)

	August 1929	August 1944	Decline In \$	Decline In %
Preferred Stocks	\$ 8,115,678	\$ 7,450,264	\$ 665,414	8.2
Common Stocks	81,552,599	45,627,223	35,925,376	44.1
All Stocks	89,668,277	53,077,487	36,590,790	41.0

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equities has not, *per se*, been the cause of loss to investors, although they have had the effect of depriving equity holders of an opportunity to recoup losses from future profits. By far the major portion of the losses sustained in the reshaping and downward revision of capital structures has resulted from the impact of change in advance of reorganization and usually was indicated by depressed market values of the securities about to be shaved. All that putting these top-heavy enterprises through the cleaners did was to give legal and accounting recognition to a *fait accompli*.

The total death of invested capital would, however, be a long and weary process were complete failures of enterprises its only cause of demise. Far more capital in the sense of individual wealth is destroyed during each complete economic cycle through loss in market value than there is through bankruptcy. Some idea of the extent of these losses may be gained from Table I, which shows the comparative market worth of all stocks traded on the New York Stock Exchange on the last business days of August of 1929 and 1944.

Not all of the stocks listed on the Big Board at the close of August, 1929, were listed or even in existence fifteen years later. Auburn Automobile, which sold at 500, and Standard Gas & Electric common, which sold at 163½, on the last business day of August, 1929, had been stricken from the list and were "wallpaper" fifteen years later. On the other hand, the common shares of Abbott Laboratories, American Viscose, Douglas Aircraft, Schenley Distillers, and many others, which sold on the New York Stock Exchange

on August 31, 1944, were not listed fifteen years earlier. Nor were August 31, 1944, prices the lowest for the 15-year period. Industrials as a group touched bottom in June, 1932, less than three years after registering their all-time high, while utility holding companies saw their equities reach their lowest point in March, 1935, when the Wheeler-Rayburn Bill, which eventually became the Public Utility Act of 1935, first was under scrutiny of the Congress.

A more intimate view of the decline in market values of listed stocks over the 15-year period may be gained from Table II, which shows the actual sales of the common shares of 55 companies on the last business days of August, 1929, and 1944. The values presented assume the purchase of one share each of the 55 issues.

INDUSTRIAL equities, it will be noted, fared best of the four groups, their more satisfactory performance being due primarily to the fact that they evidence partnership interests in nonregulated enterprises which have benefited substantially, despite ceiling prices, renegotiation of contracts, and heavy taxation, from the production of war goods. To a lesser extent, railroads too have shown an increase in earnings during war years, because of sharply expanded traffic. But despite the vastly increased demands made upon them by war industries, electric and gas utilities have been harmed, rather than benefited, by the war effort, since most of their increased demand has come from large power consumers at the lowest rates while fuel, labor, material, and tax costs have been mounting. Even so, under the tremendous pres-



The Impact of Change upon Invested Capital

"THE impact of change upon invested capital has been evident throughout our entire national history. A century and a half ago, turnpikes and post roads provided a field for profitable investment, but when man-made waterways appeared in number, much of their traffic was lost to this new type of carrier. Close to a century ago, the interlacing of the industrial East with steam railroads, and their extension to the Middle West, brought slow but inevitable loss to investors in canals."

sure of an unprecedented volume of unemployed capital seeking hire, the market prices of all stocks are substantially above the level of immediate prewar years.

Except that market prices tend, in part, to reflect the investing public's appraisal of their efforts, corporate managements have no more than an academic interest in them, nor do they attempt, except through a more efficient performance of their obligations to security holders, to influence them. Furthermore, while they naturally have their own ideas of the worth of the shares of corporations they manage, corporate executives refrain from expressing opinions as to market prices. They leave this office to stock brokers, their customers' men, and analysts.

THE medical profession, as everybody knows, has made great

strides during the past three-quarters of a century in the prevention and cure of many diseases which once took an appalling toll in human lives. As a result the human life span has been increased by more than 50 per cent in the period. When the Metropolitan Life Insurance Company was organized in March, 1868, the annual death rate in many American cities exceeded 30 per 1,000 persons. In that year the death rate in New York city was 28 per 1,000, but in some wards it reached 40, and was even higher in individual blocks. Conversely, the average life span in 1868 was only about 40 years, compared with 64 years in 1943. But among wage earners conditions were much worse. Based on Metropolitan's experience among industrial policy holders—the wage-earning class—the expectation of life in 1879 was but 34 years.

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Then came a series of remarkable discoveries. Pasteur's germ theory was established in the 1870's, and was quickly followed by identification of the causes of such destructive diseases as tuberculosis, typhoid fever, diphtheria, and pneumonia. A little later the significant rôle of insects in the spread of disease was uncovered, while Lister's antiseptic methods made possible rapid strides in modern surgery. As a result, according to Metropolitan's experience among industrial policy holders, the death rate from all causes among this type of risks, with ages ranging from 1 to 74 years, was 13½ per 1,000 in 1911, and it had dropped to only 6.1 per 1,000 by 1942, or substantially less than half the former figure. In terms of longevity the average length of life of these low-paid workers increased from 34 years in 1879 to 46.6 years in 1920, to 57.4 years in 1930, and to 64.1 years in 1942.

ALTHOUGH not susceptible of such precise identification, rapid strides have also been made during the same period in extending the life span of invested capital. For while the first school of business in the United States, as differentiated from the first "busi-

ness college," was founded at Georgetown University in 1789, just twenty-four years after establishment of the first American school of medicine at the University of Pennsylvania, and was followed by similar schools at the universities of Vermont in 1791, Tennessee in 1794, Maryland in 1807, and New York in 1831, the curriculum offered by each was exceedingly meager by present standards. This was due in large part to the lack of adequate and trustworthy data upon which to base conclusions.

The first statistical service to be established in the country was Poor's Publishing Company, which brought out "Poor's Manual of Railways & Canals" in 1860, and although publication was suspended during Civil War years, it was resumed with the close of hostilities and appeared as an annual issue until 1941, when it was sold to Moody's Investors Service and was merged with Moody's "Manual of Railroads" Standard Statistics Company was not formed until 1907 and Moody's Investors Service until 1909.

ASIDE from the purely statistical and advisory services, the National Association of Manufacturers was organized in 1895 to provide, among

TABLE II

	August 1929	August 1944	% Decline
10 Largest Railroads	\$1,816.50	\$ 325.125	82.1
10 Utility Holding Companies	1,411.25	248.375	82.4
5 Operating Electric and Gas Utilities	1,094.00	144.125	86.9
30 Blue Chip Industrials*	5,413.875	1,691.25	68.8
Total—55 Common Stocks	\$9,735.625	\$2,408.875	75.3

*Of the 30 industrials, 29 registered declines in the 15-year period while U. S. Rubber common increased \$5.25 or 11 per cent in market value.

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other things, statistical data on the broad field of manufacturing; the United States Chamber of Commerce was formed in 1912, in part to provide an exchange of information among all types of private enterprise; and the National Industrial Conference Board was established in 1916, not only to assemble vital statistics in the fields of business and economics but to interpret them. In addition, individual industries have formed trade associations or bureaus of a statistical or fact-finding nature over the past three decades to serve their special interests.

But private enterprise has not been alone in seeking out and making available in understandable form the basic data on which business judgments must be made. The Department of Commerce and Labor, created by Congress in 1903, immediately concerned itself with the collection and dissemination of data on business conditions, a service which has been vastly expanded since Commerce and Labor have been established as separate departments, and especially during the past score of years. The Interstate Commerce Commission, organized in 1887, has to an ever-increasing extent made public the vital statistics it gathers from all types of carriers. The Federal Power Commission, following expansion of its authority in 1930, has been assembling data on electric and gas utilities. And since the creation of the Securities and Exchange Commission in 1934, that agency has been publishing, or has available for examination, a wealth of data on practically every type and phase of private enterprise.

BECAUSE of this torrent of reliable data gushing from public and pri-

vate agencies, the schools of business now established at practically every sizable college and university in the land have at hand the necessary clinical material on which to base a science of business, and all varieties of private enterprise have been quick to appreciate the value of this kind of specialized education for the young men of America. In ever-increasing number, they have taken these trained men into their organizations and advanced them to positions of responsibility as fast as practical experience has tempered the theory gained in academic halls. Many of our older businessmen, who came up through the school of hard knocks, were rather contemptuous of the "book larnin'" provided graduates of schools of business in the old days. But the business depression has taught them that maybe there's something to this economics stuff after all.

Today, as never before, corporate managements have at their command detailed and reliable data on every sector of the economy of not only America but the world, and they have at their call talent trained in the art of interpreting these data. More important, there has been an awakening of the business community to the need of this information and to its application to specific problems. And, perhaps most important, the problems already proposed by the war effort have forced businessmen to think of themselves as partners in the American enterprise system, and not as participants in a battle royal in which the last man on his feet walks off with the dough. This favorable combination of conditions cannot help but result in greater security to the investor, and in extension of the life span of invested capital.



The Rural Phone Line

Many little exchanges in need of financial aid, which the author believes could be loaned by the government without loss and with great public benefit.

By B. RICHARDSON

TELEPHONE ENGINEER, OKLAHOMA CORPORATION COMMISSION

It was my privilege some months ago to prepare and present before a group of public utility commission engineers a paper dealing with the problem of rural telephone service. At that time the problem was more or less a local one; that is, various small exchanges were finding it difficult to continue operation in face of increasing expenses and decreasing revenue because of loss of subscribers, mostly rural, owing to various causes, the principal of which was poor transmission and electrical inductance. Since that time the problem seems to have become a national one. Certain Senators and Congressmen have been seeking an answer that will permit the small exchanges not only to continue, but much needed service to be extended to the rural communities.

The general trend of the discussions of the telephone people seems to be that the answer is increased rates; and that

the larger telephone companies and the manufacturers should interest themselves in the financial problem. My experience indicates that increased rates are not the answer entirely, but that reasonable rates, plus a rural saturation, are. There are small towns which cannot pay a rate sufficient to warrant the continuance of business by the utilities, towns which do not have enough potential business, even with increased rates, to do so. The only solution, therefore, for the smaller community is an adequate rural saturation plus, together with fair and reasonable rates.

Securing reasonable rates is a matter easily adjusted with any fair-minded public service commission and the public; but financing is another matter. The ideal method for this would seem to be for the larger utilities and manufacturers to form a financing corporation. I can see several difficulties, however, in respect to that:

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first, the necessary long-time loan; second, the rate of interest of the private corporation, together with overhead expense, would probably render an amortization plan unworkable; and, third, a number of the small utility owners availing themselves of the loan feature would not spend the money as directed, and would be negligent in repayment because of their belief that the larger companies and the manufacturers who assisted them should shoulder the burden, and give them their own time and pleasure in the repayment. If this be true, it would seem that some other answer should be found.

As yet I have not heard of any workable plan being presented by the telephone people. I am opposed to any government subsidy, or plan, that would lead to government operation and ownership. However, I do believe that the plan as offered in Senator Hill's bill (S 72) will, with minor changes and certain safeguards, prove workable, and will provide a complete rural saturation on a basis that will enable the utility to meet, and at the same time furnish, rural service at a reasonable cost.

The Southwestern Bell Telephone Company and several rather sizable holding companies own and operate, in Oklahoma, all the exchanges in the larger towns, and a large percentage of those in the medium-sized towns. These concerns do, and will, adequately meet any rural demands. There are approximately 250 other exchanges owned and operated by individuals and small stock companies or coöperatives. Some of these 250 exchanges are amply able to care for their own financial troubles; however, the great ma-

jority are now operating plants that are much deteriorated. In some instances, equipment and pole facilities are in such shape that much money will be necessary to restore them to serviceable condition. Money will also be required for extensions and to care for offered and potential business after the present emergency, when manufacturers are able to supply necessary materials. The owners of many of these exchanges are financially unable to carry on any program in line with the above; nor will they be able to borrow funds for any construction purpose in line with expanded and satisfactory telephone service.

IN Oklahoma we have studied the financial needs of the business and find that the small telephone utility can rarely borrow any sum on the plant. We have numerous communities that need service. We have a great number of persons who have all their investment tied up in the nucleus of a central exchange, but with insufficient business and revenues to operate on a basis assuring a reasonable living and income on the investment.

Commencing with the depression, first felt by the telephone people about the year 1932 or 1933, Oklahoma lost about 16,000 rural customers, all of whom are potential subscribers. We naturally thought this loss was primarily owing to the fact that these rural customers could no longer afford the service; but after a careful study and research we have come to the conclusion that a rural resident gives up his telephone usually, not because of inability to pay for it but because of poor transmission, poor service, electrical inductive noises, or because the utility

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carries the account on an annual or semiannual basis. The rural resident will not give up his telephone if the transmission and service are satisfactory.

The exchange that can and will give good service to its rural patrons will not only hold its present subscribers, but will add all other homesteads within reach. However, the individually owned utility is unable to finance this himself or borrow money to do it.

It is my opinion that the government should form an administrative agency for the purpose of loaning the telephone company or utility money for the purpose of building, rebuilding, or rehabilitating, as the case may be, rural lines connected with the exchange, with a proviso for amortization over a period of twenty-five years through a monthly surcharge to the customer, in addition to his regular exchange service rate. I have selected twenty-five years rather than the thirty-five years suggested by Senator Hill for the reason that twenty-five years is about the reasonable serviceable life span of the facilities to be purchased with the loan money.

I BELIEVE if the utilities can secure sufficient money to build and extend rural lines that they will be able to care for the town part and the central office part of the service out of their present funds and revenues. In Oklahoma each operating utility is serving approximately 600 quarter sections of land. I am informed by our Farmers' Union organization that the ordinary country town draws trade from, and caters to, approximately 400 farm units so that there should be about 200 substantial farm homes as potential subscribers. If the utility serving this community were able to extend satisfactory lines in each direction from its office to the territory of these farms it should be able to install not less than 100 telephones. If and when it proves its service a much larger percentage can be counted on. If this be true, the 100 telephones in the country should support from 75 to 100 in town; that is, if the utility which now has from 50 to 75 subscribers, probably operating at a financial sacrifice, could secure financial aid to extend its lines to all potential subscribers, the exchange would be taken from the



Q "THE Southwestern Bell Telephone Company and several rather sizable holding companies own and operate, in Oklahoma, all the exchanges in the larger towns, and a large percentage of those in the medium-sized towns. These concerns do, and will, adequately meet any rural demands. There are approximately 250 other exchanges owned and operated by individuals and small stock companies or coöperatives. Some of these 250 exchanges are amply able to care for their own financial troubles; however, the great majority are now operating plants that are much deteriorated. In some instances, equipment and pole facilities are in such shape that much money will be necessary to restore them to serviceable condition."

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liability column and considered definitely an asset. It would be operating with sufficient revenue to be one of the most lucrative businesses in town. At the same time this would build up that particular town and make its telephone service worth while. It would also provide an added incentive for the younger folks to stay at home rather than migrate to the larger cities. I might say in passing that I am an advocate of stressing the social feature of the telephone, for if young people can have good and satisfactory telephone service, they will be more content with farm life.

WE are, after a rather extensive study, of the opinion there are in excess of 25,000 farm and ranch homes in Oklahoma now without telephone service that could be contracted with at once if the service should become available, and others that would eventually follow their neighbors, if good service is found to be the rule instead of the exception. The above potential subscribers are scattered all over the state. Some are now in line for service from near-by exchanges with sufficient funds to make any required extension, but the majority will not be able to secure service until some form of financing is made available. If funds are provided by some governmental agency the paramount purpose should be to assure service to the rural subscriber—not the purchase of existing properties, or unrestricted financing.

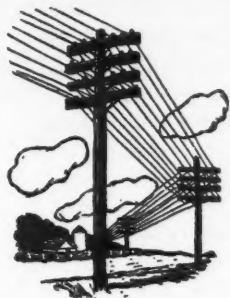
Some statements have been made of late that funds are available from present governmental agencies under regular loan agreements, and that perhaps more will be in sight owing to the present discussion of the matter. I do not

believe that money should be loaned by the public to finance telephone property unless it be required to be spent specifically for rural extensions newly constructed throughout. I say this because if the money is advanced to the ordinary telephone company without restrictions, even for extensions, it will, in all honesty and in careful judgment from its economic standpoint, be used as follows: First, existing pole lines designed for a small load will immediately be overloaded with the wire necessary to metalize; second, the existing ground return wire will be used, with the addition of a new wire, to complete a metallic circuit. This circuit will perhaps work fairly well for a time, but will very shortly become noisy because of unbalanced conditions.

ANY new work financed as contemplated should be required to follow a definite standard of construction. This standard should be carefully considered and worked out by practical telephone men with long experience, and known to have two objectives in their past work: first, construction of good reliable lines that can reasonably be expected to give service under any conditions encountered; and, second, the most economical construction that at the same time will serve the purpose of the first requirement. Too high a standard will result in failure because of cost, and too low a standard will fail because of poor service and short service life.

In addition to unrestricted loans many suggestions have been made as to the feasibility of isolated automatic units, micro-wave, carrier systems, etc., all of which will probably eventually be in common use. However, because

THE RURAL PHONE LINE



Rehabilitation of Rural Telephone Service

"THERE is a great need for the rehabilitation of present rural telephone service, and a greater need for extensions of this service until saturation has been reached. The present rural mail service is adequately serving the rural resident. The present consolidated school system with its gathering bus system is bringing city schooling to the most remote country child. The REA is now in the course of furnishing electric service. This leaves only a satisfactory telephone service necessary to make country life really enjoyable and worth while."

of their more or less experimental use, and of the necessity of trained technical maintenance men, I am of the opinion the only practical line that should be considered now—the time when rural extensions may be made—is the old reliable metallic line served with common battery or dial service where possible, and with the standard magneto instrument in all other places. This line can be maintained by relatively inexperienced men, will give service in extreme weather conditions, and will not go out when some transformer or power switch has been blown. I might state in passing that under the same line and maintenance conditions the magneto local battery service is the best telephone service yet placed in common use.

SHOULD such an agency as I suggest become a reality, its authority should embrace coördination and coöperation with the state public service commissions, and, as far as possible, with the state telephone associations; and the agency should extend assistance only where there would be no duplication of facilities.

Normally, when thinking about aiding small telephone utilities, we assume that the program would come under the supervision of the Federal Communications Commission or the Rural Electrification Administration. From my years of experience in Oklahoma, however, I would suggest that a separate agency be organized for this purpose. It would not have to be large. As a matter of fact, the financial margin is

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so slight, based upon present rates and ability of the patron to pay, that administration by any existing organization is out of the question. The usual more or less extravagant setup would create a per capita overhead that would make any service prohibitive, even though standards were lowered pertaining to the class of construction in question. Any successful administrative authority will necessarily be in the hands of hard-headed, economical, and practical construction men who have proven their ability in administrative places. So they should be permitted to deviate from established standards sufficiently to allow a class of construction reasonably to satisfy existing demands.

To sum up. There is a great need for the rehabilitation of present rural telephone service, and a greater need for extensions of this service until saturation has been reached. The present rural mail service is adequately serving the rural resident. The present consolidated school system with its gathering bus system is bringing city schooling to the most remote country child.

The REA is now in the course of furnishing electric service. This leaves only a satisfactory telephone

service necessary to make country life really enjoyable and worth while. If we could just erase all rural telephone service and start from scratch, as the REA has done—with some few exceptions—the problem would be much simplified; but we have multiplied systems and multiplied ownerships to consider, in the hands of men who have done their best to furnish rural service, but who have seen their investment go by the deterioration route, simply because they did not earn enough upon which to live and properly maintain their plants. These men should have some aid. There is no help available from any private source. This I know because I have investigated every probable phase of the question. I seriously doubt whether any existing administrative agency will loan on any ordinary plant however urgent and acute the need of financing.

I do not suggest that any money be given or sufficient money advanced to justify the utility owner in relinquishing his plant to the government. All I suggest is that sufficient money be advanced, earmarked for a specific purpose, and made repayable over a reasonable term at a low rate of interest. This will enable the owner to furnish a good grade of service to an extended area, make a living, and repay the loan.

Alligator Oil—It's No Gag, Either!

WHILE Uncle Sam's motorists are squeezing every drop of gasoline out of their ration books, Brazilians are discovering their own "gushers" in the jungle-snarled regions of the Amazon, a National Geographical Society bulletin reported sometime ago.

Oil, rendered from the liver, intestines, and fatty tissue under the hides of alligators, or their South American cousins, caymans, is the newest motor miracle of Brazil.

Mixed with other motor fuel, "alligator gallons" pinch hit for straight gasoline to keep taxis, busses, and private cars purring along highways. As a lubricant the oil is used in precision machinery. Electric power plants also dip into the new source for their oil needs.

Government Utility Happenings



ON May 14th the Senate passed the Lucas Bill (S 89) to increase the lending authority of the Rural Electrification Administration for the fiscal years of 1945 through 1948. In the process, the Senate also approved, without a record vote, the inclusion of the so-called Shipstead amendment to restore the independence of REA by taking it out of the control of the Agriculture Department. The fact that no fight materialized on the floor of the Senate against the Shipstead amendment was taken to indicate that President Truman had no particular objection to the legislation, although there was considerable speculation that his predecessor might even have vetoed the Lucas Bill if it had come before him with the Shipstead amendment attached.

After passage by the Senate, the Lucas Bill went to the House where it was immediately referred to the Committee on Interstate and Foreign Commerce. Washington observers were inclined to believe that the House body would follow one of two courses: (1) More likely, it would approve the bill substantially in the form passed by the Senate; (2) it might amend it so as to place REA under the Reconstruction Finance Corporation. In either event, REA would pass from Agriculture and have more liberty of action, since it was not believed that the Senate would yield to House amendments placing REA under top control of RFC, unless some protective provisions were included which would insure REA of independence on matters of policy.

It was considered very unlikely, however, that the pending legislation would fail as the result of any indissoluble conflict between the two chambers of Congress. As it passed the Senate, the Lucas

Bill authorizes REA appropriations for making loans totaling \$520,000,000, according to the following scheme: \$35,000,000 for the fiscal year 1945; \$70,000,000 for the fiscal year 1946; \$200,000,000 for the fiscal year 1947; and \$200,000,000 for the fiscal year 1948. An additional \$5,000,000 would be authorized annually for the years 1946, 1947, and 1948 for administrative and planning purposes.

ACTION of President Truman on May 23rd in naming Secretary of Agriculture Wickard to head the REA admittedly complicated the possibilities with respect to the Lucas Bill. On the Senate side, there was some speculation that the Agriculture Committee, which had voted heavily in favor of the Shipstead amendment to divorce REA, might not approve without question the President's new choice of an REA Administrator. This same Agriculture Committee was scheduled to pass on Mr. Wickard's nomination to REA. It was because of the alleged unsatisfactory state of affairs developed within REA while it was under control of the Agriculture Department, headed by Mr. Wickard, that the committee endorsed the Shipstead amendment to the Lucas Bill and the Senate approved it.

On the House side, however, Speaker Rayburn on May 24th indicated that he did not believe the House would accept the Lucas Bill with the Shipstead amendment in the form approved by the Senate. If this proves to be true, it may precipitate a conference fight between the two chambers. There were rumors, also, that a new bill greatly increasing REA's lending power for the year 1946 beyond that

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contained in the Lucas Bill might supersede the latter.

Claude R. Wickard, REA Administrator designate, was born in 1883 in Carroll county, Indiana, and has a background which includes nearly a quarter of a century of active farm operations. He graduated from Purdue University (BSA '15) and after a career of successful farming joined the Agriculture Adjustment Administration in 1933, through which he worked up to Under Secretary of Agriculture in February, 1940. The following September he was appointed Secretary of Agriculture, succeeding Henry A. Wallace.

DURING the debate on the REA Bill the author of the measure, Senator Lucas (Democrat, Illinois), disclosed that REA borrowers to whom allotments have been made now number 904, of which only 19 are business-managed utility companies, and the balance coöperatives and public bodies—principally the former. REA loans have resulted, said Lucas, in electrifying 1,200,000 farms and rural homes, while the Secretary of Agriculture has estimated that there are 15,000,000 farm and (nonfarm) rural homes still without electricity.

Also of interest was Senator Lucas' disclosure that some of the new loans will have to go for rehabilitation of lines already unsatisfactory because of improper initial construction—lines not yet more than a decade old. (REA loans are currently for a period of thirty-five years.) Senator Lucas quoted a typical letter from an REA co-op as follows:

We have made about the last extension we can make until our main lines are rebuilt. They were built too light from the first. We are not blaming anyone, but the recommendation and advice of REA was too little and too light originally. . . . Low voltage stands in our way. Large transformers were put in at our substations and every device has been used that we know of to keep up the voltage until we are at the end of our capacity.

Acting REA Administrator Neal on May 13th, at REA headquarters in St. Louis, said officials of more than 900 rural electric systems in the United States

financed by the REA have been instructed to start work at once on delayed power line construction projects totaling \$100,000,000. With the War Production Board liberalizing wartime restrictions on power line construction, he added, the REA faced "the biggest power line construction job in history."

STIMULATED by the Senate action on the bill for the independence of REA, an action committee of the recently organized Committee for the Independence of REA arrived in Washington on May 14th. Washington headquarters were established at the New Colonial hotel. Senator Shipstead and Congressman Carnahan (Democrat, Missouri) and Taile (Republican, Iowa), who last January introduced identical bills for removing REA from the Department of Agriculture, were contacted and assured vigorous support of the committee which was already authorized to represent a large number of individual REA co-ops in some 25 important states. The committee is composed of the following:

Ansel I. Moore, chairman, manager of Ozark Border Electric Coöperative, Poplar Bluff, Missouri; also president, Missouri Statewide.

L. C. Groat, secretary, manager of Spoon River Electric Coöperative, Canton, Illinois.

C. F. Helsner, president of Ohio Statewide, and trustee of South Central Rural Electric Coöperative, Lancaster, Ohio.

John Hendricks, president of Eastern Iowa Light & Power Coöperative, Davenport, Iowa.

Roy Boecher, manager of Cimmaron Electric Coöperative, Kingfisher, Oklahoma.

Thomas E. Stevenson, manager of Claiborne Electric Coöperative, Homer, Louisiana.

Dr. K. T. Hutchinson, president of Tennessee Statewide and president, Middle Tennessee Electric Coöperative, Murfreesboro, Tennessee.

At a conference held in the office of Senator Shipstead recently, attended by the introducers of the bill, Chairman Ansel I. Moore issued the following statement:

This committee represents the desires long held by an overwhelming majority of the 800 individual REA coöperatives that REA

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be restored to its original status as a non-partisan, nonpolitical agency as provided in the Norris-Rayburn Act of 1936. We agree with the statement of Senator Norris, made just before his untimely passing, that it was a mistake to place this agency under the control of Agriculture or any other department of the Federal government at whose head stood a chief appointed for partisan political reasons.

We strongly favor the Lucas Bill appropriating \$585,000,000 in addition to the regular appropriation for much-needed postwar expansion, but we insist that this vast sum be administered and allocated in an honest, businesslike manner, high above partisan or political control, national or local, or private corporation, or any other self-seeking influence, and devoted wholly to the welfare of rural America.

REALIZING that the sentiment among the 800 coöperatives for independence suggested concerted action to the end that the members of Congress, the Federal government, and the public might know the real desires of the farmers and rural users in this matter, Mr. Moore, president of the Missouri Rural Electrification Association, composed of the co-ops of his state, after wide consultation with other co-ops in other states, sent out a call with the result that representatives of some 100 coöperatives met at San Antonio on January 15th and unanimously recommended to the resolutions committee of the existing National Rural Electric Coöperative Association at its third annual convention a resolution calling for the immediate independence of REA before postwar expansion should begin.

The resolutions committee and the convention agreed in principle to the idea of independence but voted that no immediate action was to be taken. However, the sentiment for immediate action, based on the official report and recommendation of the Senate investigating committee and their own experience, grew rapidly among the 500-odd members of the NRECA and the 300-odd coöperatives not members of the association. Hence, on April 14th the independence men met again at St. Louis and effected a permanent organization for action.

The action committee now claims to

represent approximately 300 coöperatives in 25 states. The poll and completion of the new organization are still in progress, but the trend was said to indicate that over 90 per cent of the coöperatives favored restoration of REA to its original freedom under the Norris-Rayburn Act.

* * * *

SOMETHING new in labor history was established recently when the Bonneville Power Administration signed a collective bargaining agreement in Portland, Oregon, with American Federation of Labor unions, covering workers on the government's Columbia river power projects. The pact was said to climax long negotiations. At the outset, the administration took the position that, as a unit of the Department of Interior, with personnel policies controlled by the Civil Service Commission, it could not legally enter into a contract with the unions. Later it reversed its stand and embarked on collective bargaining.

The pact finally signed recognizes the unions, for purposes of their membership representation, provides for union-management coöperation, sets up joint committees on common problems, and includes machinery for adjustment of grievances. Wages and other matters are to be disposed of later.

The agreement with Bonneville was said to be the first secured from any agency within the Civil Service Commission's jurisdiction. Whether the commission would veto the agreement remained to be seen. In the past it has opposed collective bargaining by Federal employees, union spokesmen said.

The agreement, however, does not recognize the right of Bonneville employees to strike, nor a closed shop for the AFL unions involved. It definitely fixes neither wage-hour standards nor work condition terms, but simply sets up machinery for further negotiation along those lines.

Furthermore, as stated, it was still subject to the Civil Service Commission's approval and that body has in the past opposed collective bargaining by Federal

PUBLIC UTILITIES FORTNIGHTLY

employees with government agencies. The agreement goes further, however, than any previous attempt to place government-employee relationship on a union pact basis. By the terms of the agreement, conference and consultative machinery and procedures, through the process of collective bargaining, are set up for the following purposes:

1. To provide for joint determination of fair and reasonable rates of pay, hours, and working conditions; (2) to insure the making of appointments and promotions on a merit basis; (3) to promote stability of employment and to establish satisfactory tenure; (4) to provide for improvement and betterment programs designed to aid the employees in achieving their acknowledged and recognized objectives; (5) to promote the highest degree of efficiency and responsibility in the performance of the work and the accomplishment of the public purposes of the Bonneville Power Administration; (6) to adjust promptly all disputes, whether related to matters covered by the agreement or otherwise; (7) to promote systematic labor-management cooperation between the administration and its employees; and (8) to aid the reestablishment in civilian life of returning veterans.

In addition to establishing fact-finding committees and the machinery for mediation and arbitration in matters of wage rate controversy, the agreement provides for a joint board of adjustment to act as the final determining body in matters under dispute.

* * * *

THE city of Chisholm, St. Louis county, Minnesota, is perhaps the first American city to enact legislation that will provide central heating utility service. The Chisholm city council has passed an ordinance for furnishing central steam heat and electric power to the city from a cooperatively owned plant. The franchise, awarded to John J. Dwyer of Duluth, authorizes the construction of an adequate steam- and electric-generating plant, with the necessary underground heat distribution lines and

electrical circuits, as soon as war production schedules permit release of materials.

Chisholm's steam-heating service will be made available to every residential, commercial, and industrial building, where it can be adapted to existent warm-air, hot-water, or steam-heating systems. It was brought out at council meetings that this would completely eliminate the need for individual furnace stoking and ash handling, and would abate a smoke nuisance, assuring a cleaner, more healthful community. Preliminary estimates indicate that the over-all fuel consumption will be reduced approximately 25 per cent. Another benefit considered was the utilization of extra basement space upon removal of individual furnaces.

* * * *

INCORPORATION in Nebraska of the Panhandle Rural Electric Coöperative is the first step in a plan to bring the benefits of electric service to ranchers and farmers in the northwestern part of the state. Lines are to be built from Ashby, in Grant county, through Alliance to Hay Springs and to the eastern end of Sheridan county. Organization is to be pushed rapidly so that the district may secure an allocation of Federal funds in the form of a loan at 2 per cent, payable in thirty-five years.

Because of the sparsely settled condition of the area, REA has informed the organizers that one of the primary requirements will be an income of \$10.50 per month per mile, which is higher, necessarily, than in more densely populated sections.

* * * *

CITIZENS of the Hazel Dell community, Washington, last month began consideration of plans for a water district for their area, following presentation of the possibilities of a rural water system. The district has been considering an engineering survey in an area north of Vancouver, contemplating creation of a water system under PUD sponsorship and management.



Wire and Wireless Communication

NEW long-distance telephone rates, which will result in an estimated reduction of \$21,000,000 in America's annual telephone bill but which will apply only to calls over distances of 790 miles or more, will go into effect on July 1st, it was announced last month.

The new rates were described in statements issued by the American Telephone and Telegraph Company and the Federal Communications Commission. Arrived at through the process of give and take in negotiation, they were not based on any simple, uniform percentage cut but vary with the distance and type of service.

The figure of 790 miles as the starting point for the reductions, it was said, was selected also through negotiations.

What the reductions will mean to New York city telephone users was illustrated

with specific examples. In calls from New York to Chicago or Atlanta, both of which lie within a 790-mile radius of the city, there will be no reduction. For a daytime station-to-station call from New York to San Francisco, however, the rate will be reduced from \$4 to \$2.50. The rate for the same type calls to Miami will drop from \$2.40 to \$2.10, for calls to Cedar Rapids, Iowa, from \$2.10 to \$1.95. Los Angeles and Seattle reductions will be the same as those for calls to San Francisco.

A note of criticism of the reductions was apparent in the AT&T statement. It said in part:

In commenting upon these reductions President Walter S. Gifford, of AT&T, pointed out that the rates are under the exclusive jurisdiction of the Federal Communications Commission, which has jurisdiction over interstate rates only. The com-

Route	Miles	Station-to-station Day Rate	
		Present	Proposed
New York—Cedar Rapids, Iowa	946	\$2.10	\$1.95
Des Moines, Iowa	1,053	2.30	2.05
Fargo, North Dakota	1,257	2.60	2.20
Galveston, Texas	1,417	2.90	2.30
El Paso, Texas	1,931	3.50	2.40
Spokane, Washington	2,252	3.75	2.45
San Francisco, California	2,629	4.00	2.50
Seattle, Washington	2,499	4.00	2.50
Washington, D. C.—Duluth, Minnesota	940	2.10	1.95
Beaumont, Texas	1,170	2.50	2.15
Oklahoma City, Oklahoma	1,174	2.50	2.15
San Antonio, Texas	1,418	2.90	2.30
Butte, Montana	1,902	3.50	2.40
Spokane, Washington	2,150	3.75	2.45
Los Angeles, California	2,332	4.00	2.50
San Francisco, California	2,485	4.00	2.50

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mission has insisted that the earnings from such rates should be considered by themselves, regardless of over-all Bell system earnings, and has insisted that, when so considered, they produce a return greater than could be justified—this in spite of the fact that the return resulted from the extraordinary wartime volume of long-distance calls and the temporary overloading of the long-distance plant.

THE FCC announcement said that the cuts, depending on distance and type of call, ran from 10 to 37 per cent. The table on page 759 shows the proposed new rate and the amount of the reduction for daytime station-to-station calls to 10 cities more than 790 miles from New York.

A table based on the rates for various types of service for calls over four different mileages is shown below. The distances were chosen at random between them.

It was pointed out that the rate from New York to San Francisco was \$10.25 for a daytime station-to-station call, dropping to \$4 in the proposed reduction, a total cut of \$6.25.

* * * *

THE Federal Communications Commission on May 17th announced its final frequency allocations to the non-governmental radio services in the portion of the spectrum between 25 and 30,000 megacycles with the exception of the 44- to 108-megacycle region of the spectrum, which is left unassigned at this time pending the outcome of measurements and tests of FM transmission during the coming summer.

This space will ultimately be allocated as follows: 36 megacycles to television,

18 megacycles to FM, 2 megacycles to facsimile, 4 megacycles to the amateurs, and 4 megacycles to nongovernment fixed and mobile services. The precise allocation within this region to the above services remained undecided but the commission indicated three possible alternative allocations for this region, which turn upon the exact location of FM. The three alternatives for FM are (1) 50-68 megacycles, (2) 68-86 megacycles, and (3) 84-102 megacycles. The commission also announced that with the coöperation of the radio industry it is immediately planning to proceed with tests during the summer which are designed to determine the best of the three alternatives. A joint committee, under the chairmanship of the commission's chief engineer, and composed of engineers from the commission and the radio industry, will conduct these tests.

The reason for not making a final decision at the time was that the commission felt that further measurements were desirable before making a final allocation for FM. In this connection the commission pointed out that its decision not to make a final allocation for FM at this time would not in any way hamper the future development of that service because the commission has received advice from the War Production Board that the radio industry will not resume production of new AM, FM, and television transmitters or receivers "in 1945 or even in the first part of 1946 unless Japan capitulates. This is not to say that a small quantity of receivers and possibly a few transmitters may not be made available. However, this will have little or no effect on the future expansion of AM, FM, and



Mileage		Station-to-station		Person-to-person	
		Day	Night and Sunday	Day	Night and Sunday
1,000	New	\$2.00	\$1.50	\$2.70	\$2.20
	Old	2.20	1.55	2.95	2.30
1,400	New	2.25	1.75	3.00	2.50
	Old	2.90	2.00	3.85	2.95
1,800	New	2.40	1.90	3.30	2.80
	Old	3.50	2.50	4.50	3.50
2,300	New	2.50	2.00	3.50	3.00
	Old	4.00	3.00	5.00	4.00

WIRE AND WIRELESS COMMUNICATION

television services." The War Production Board has also advised the commission that in the event there is any change in its prediction, it will give ninety days' advance notice.

These allocations will probably be ordered into effect service by service, with the commission taking into account such factors as the availability of man power and materials, the results of the Inter-American conference at Rio, and the preparation of the commission's rules and standards. Of course, any allocations made by the commission are subject to being changed to conform to the provisions of international agreements.

* * * *

MEMBERS of the National Telephone Panel visited New York on May 21st and 22nd to discuss the National War Labor Board's wage stabilization policy for the telephone industry with labor and industry representatives in the New York area.

The meetings, which were informal discussions, were headed by Pearce Davis, chairman of the panel. He was assisted by G. K. McCorkle, Chicago, vice president of the Illinois Bell Telephone Company, and Burton W. Saunders, La Fayette, Indiana, vice president of the Indiana Associated Telephone Company, industry members of the panel. Labor members of the panel who attended the meetings were John J. Moran, New York, president of the Federation of Long Lines Telephone Workers, independent, and William M. Dunn, president of the Cincinnati Federation of Telephone Workers, independent.

The meetings were held in the north ballroom of the Hotel New Yorker from 10:30 A. M. to 12:30 P. M. and from 2 P. M. to 4 P. M. each day. The May 21st meetings were devoted to discussions with employees and their representatives and the meetings on the following day were for management representatives.

"The discussions are primarily for the benefit of those in the New York area," said Mr. Davis prior to the meetings, "but people living elsewhere who happen to be in New York on other business

will be welcome. The purpose of the meetings is to afford employees and employers an opportunity to become more familiar with the details and application of the board's wage stabilization policy for the telephone industry. We will endeavor to answer any and all questions that may be put to us."

This was the second of the panel's informal discussions with labor and management representatives. The first of these meetings was held in Chicago early last month.

The National Telephone Panel was created by the NWLB on December 29, 1944, to have jurisdiction over all dispute and voluntary cases arising in the telephone industry. At the instruction of the board, the panel prepared a survey of the wage stabilization problems peculiar to the industry and made recommendations to the board for their disposition. This report, based on the consideration of the telephone cases before the board, was unanimously adopted by the NWLB as a basis for wage stabilization in the industry.

* * * *

FORMATION of the United Communications Association, an independent federation of five independent telephone workers' unions with a membership of 23,500, was announced in New York city last month by Eugene F. Dougherty, who was elected president. The purpose of the federation is to standardize collective bargaining and improve working conditions.

The workers represented by the new federation are members of the Federation of Long Lines Telephone Workers, Branch 101, with 6,000 members; Branch 7,002 of the same union, with 500 plant workers; the Traffic Employees Association, with 12,000 operators of the New York Telephone Company; the Telephone Employees Organization, with 2,500 accounting department employees; and the Union of Telephone Workers, with 2,500 commercial department workers.

Mr. Dougherty is a member of the Union of Telephone Workers.



Financial News and Comment

By OWEN ELY

The 1944 Revenue Dollar

THE annual statistical bulletin for 1944, recently published by the Edison Electric Institute, permits new statistical comparisons for the electric power and light industry — reflecting wartime changes in operations and finance. Among other summaries, the bulletin shows the total income of the electric power and light companies and principal items of expenditure, from which it is simple to work out percentages of expenditures to gross receipts, or cents in the "revenue dollar." Dividend figures are not available in the report for 1944. In comparing figures for the year 1944 with those of 1943 and the prewar year 1939, it is of interest to see the inroads made by increased taxes and costs at the expense of the stockholder. In 1939 the stockholder had a claim on 24 cents of the revenue dollar (including preferred dividends) while in 1914 this had been reduced by nearly one-third, to 17 cents. The tax share of each dollar jumped from 15 cents in 1939 to 23 cents in 1944, and operating expenses increased from 35 cents to 39 cents. These gains were partially offset by a decline in interest from 15 cents to 11 cents and in depreciation from 11 cents to 10 cents.

The change in 1944 as compared with 1943 was relatively slight, but reflected a continuation of the previous trend. Operating expenses took 1 per cent more than previously; and since depreciation, taxes, and interest remained the same, the increased cost was taken out of the stockholders' portion.

The Edison report (page 35) also shows some details of operating expenses but unfortunately these are always more than a year old, 1943 being the latest now

available. However, they throw some light on the present trends. Cost of fuel has been advancing sharply for various reasons and in 1943 increased to \$363,000,000 compared with \$283,000,000 in the previous year. The increase of \$80,000,000 accounted for nearly two-thirds of the gain in operating expenses. It appears likely that this item again increased in 1944, and the anticipated price mark-ups due to recent wage adjustments may result in a further increase in 1945. However, smaller use of stand-by steam plants might prove an offsetting factor.

UTILITIES have been very fortunate in being able to handle a greatly increased amount of business during the war with a smaller number of employees than in the prewar period. The U. S. Department of Labor index of employment for the industry dropped from 100 in 1939 and 104.2 in 1941 to 82.9 in 1944; the payroll index, however, increased from 100 to 114.2. The companies were able to hold down the payroll by (1) not replacing employees lost to the war effort; (2) by deferring some maintenance; (3) by instituting economies such as bimonthly billings; and (4) by overtime work of employees. It seems probable that some old-line companies like Consolidated Edison were moderately overstaffed before the war, and loss of employees has permitted a general readjustment in the interest of greater efficiency and economy. However, many of the companies are committed to taking back former employees now in the armed services after the war. Also the unions' objections to bimonthly billing and similar economies may be renewed after

FINANCIAL NEWS AND COMMENT

the war. The utilities may, therefore, face a problem with their labor costs after VJ-Day.

However, excess profits taxes will furnish an excellent cushion for rising costs, for those companies which pay this tax. The protection afforded by the 40 per cent normal and surtax rate, for companies which pay only that tax, is of course less favorable.

Tax Relief Postponed Indefinitely?

RELIEF from the heavy tax burden now appears less likely. Senator Walter F. George several weeks ago indicated that Congress was ready to make some tax concessions to corporations, in addition to that already obtainable in the way of "carry-backs," etc., through the present law. But Mr. Morgenthau differed with the Senator, and apparently the President is backing the Secretary of the Treasury. Arthur Krock, *The New York Times* Washington observer, thinks the program will be: "no important tax reduction until at least one year after VJ-Day; then 20 per cent or so off excess profits taxes and some relief for low-income groups; later a larger reduction of corporate levies and some relief for the other income groups." The President's attitude is said to be based on the assumption that it will be unnecessary to use tax reductions to stimulate business activity in the immediate postwar period, and that this will afford a good opportunity to turn the Federal deficit into a surplus of perhaps \$25,000,000,000, and make a good beginning toward general debt reduction.

This is an unfortunate development for the utility companies. They have undoubtedly borne an excessive portion of the war burden, despite the fact that their services were invaluable in supporting the war effort. The utilities will not be able to take much advantage of the special features of the present tax law, such as carry-backs, which will help to tide industrial companies through any irregu-

larities in postwar income. A few concessions were made in the 1943 tax law to the utilities but these benefited the holding company systems more than the independent companies.

Congress should recognize that the excess profits tax idea is not logically applicable to the utility companies because their earnings are fully regulated, and generally restricted to between 5 per cent and 6 per cent on the investment. In 1943 the return on net plant account and working capital averaged 5½ per cent for all A and B electric utilities, after substantial write-offs enforced by regulatory authorities in recent years. The excess profits tax is supposed to be levied only on earnings over 8 per cent, 7 per cent, and 6 per cent on varying portions of taxable income.

The utilities are being penalized for technical errors which they made in earlier years. They took advantage of the Treasury Department's apparent generosity to accrue, in many cases, heavy depreciation reserves, since charges to the reserves resulted in lower taxable earnings for the years in question.

These increased charges resulted in heavy reserves and smaller surplus, which in turn reduced the invested capital base for tax purposes in the wartime period, and resulted in smaller earnings exemptions. While the companies had the option of using prewar earnings figures as a tax base, these figures were below normal in many cases due to the 1938 depression and other factors.

The unfair application of Federal tax laws to the utility companies was discussed at some length, and illustrated by statistical calculations, in the findings regarding the earning power of Pennsylvania Power & Light Company by the Pennsylvania state commission, in its rate decision of several months ago.

It now appears that VJ-Day may be at least a year away. Must the utilities wait two years longer before obtaining relief from their burden of Federal taxes, which now take more out of utility earnings than is paid out to stockholders and to employees?

PUBLIC UTILITIES FORTNIGHTLY

	Gross Income	Net Income	Approx. Mkt. Value Pfd. Stocks	Ratio Market Value to Earnings
Long Island Lighting (company only) ..	\$3,269	\$1,859	\$22,400	12.0
Queens Borough (company only)	1,372	562	4,800	8.6
Nassau & Suffolk	372	80	1,400	17.6
Long Beach Gas .....	*	*	....	...
New merged company	\$5,013	\$2,501		
Kings County Lighting Company	512	231	2,500	10.8
	\$5,525	\$2,732		

* Not available; amount would be negligible.

Long Island Lighting Company

(Series of holding company reviews.)

THE Long Island Lighting Company's plan of recapitalization, finally approved in 1944 after a long delay by the public service commission of New York, now appears to be "dead." The SEC sought to secure jurisdiction over Long Island Lighting as a holding company and while two lower Federal courts supported the company's contention that it should not be subject to Federal regulation, the company suddenly decided not to carry the fight to the Supreme Court. (The SEC had filed an appeal.) Accordingly, it recently registered as a holding company, and a new plan will now be prepared and submitted to the SEC and the New York commission.

It appears likely that there will be a consolidation of Long Island Lighting, Queens Borough Gas & Electric, and the latter's subsidiaries—Nassau & Suffolk Lighting Company and Long Beach Gas Company. Instead of retaining present arrearages on the various preferred stocks (as in the previous plan), the

commission will doubtless prefer an all common recapitalization with varying percentages of stock assigned to different classes of stockholders. It seems a fair possibility that Kings County Lighting (which is an isolated property not connected with the rest of the system) may be sold, or it may be recapitalized with control left in the hands of the preferred stockholders. A bond-refunding operation is in progress.

It is impracticable to attempt an estimate of the apportionment of the new common stock to the various publicly held stock issues of the system without more complete data than are currently available. For the twelve months ended March 31, 1945, gross and net income (000 omitted), and recent market valuation of the preferred stocks of each company, were as shown in the table above.

The above market valuations were arrived at by applying over-counter bid prices to the outstanding shares. (See table below.)

There are no minority common stocks in the system with the exception of 2.27 per cent of Kings County Lighting common. Long Island Lighting common

	No. Shares	Recent Bid Price	Arrears
L. I. Lighting 7% pfd.	74,750	91	\$50
L. I. Lighting 6% pfd.	179,050	87	43
Queens Borough 6% pfd.	66,860	72	45
Nassau & Suffolk 7% pfd.	27,262	52	68
Kings County Lighting 7% B.	18,164	61	12
Kings County Lighting 6% C.	1,129	..	11
Kings County Lighting 5% D.	25,000	52½	9

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(3,000,000 shares outstanding) is quoted over the counter at around 1.

The varying ratios of market value to earnings should not be considered as a measure of the relative attractiveness of the various preferred stocks. Earnings have been undergoing sharp changes recently due to the hurricane of September 14th (estimated to have cost \$750,000 in expenses and lost revenues), refunding operations, etc. In December, 1944, as the result of intersystem litigation, Nassau & Suffolk made certain payments to Queens Borough Gas & Electric. Thus considerable study would be necessary to appraise correctly the true earning power applicable to the various preferred stocks. The relatively high valuation for the Long Island Lighting preferred stocks may be due to the equity interest owned in Queens Borough and Kings County. Queens reported earnings of 80 cents a share on its common stock in the twelve months ended March 31st.

ONE difficulty with Long Island Lighting's present setup is that the public service commission requires approximately one-half of net income to be reserved for debt reduction. As it is doubtful whether separation of Kings County Lighting from the system will yield any funds, it is possible that these reserves may have to be carried along into the new setup unless the public service commission is satisfied that they are no longer necessary.

Judging from the tempo of other holding company plans, it appears likely that one to three years may elapse before a new plan is developed, filed with the two commissions, and investigated and approved by the two commissions and a Federal court of jurisdiction.

In the meantime, however, stockholders will again be able to trade in their securities under a new arrangement being worked out by the company. Since last December, Long Island Lighting stockholders have been unable to deal in or transfer their securities or to obtain quotations on the New York Curb. (Over-the-counter dealers continued to quote the securities, however, and it is possible that

transfers have been made in "street name.") The management is now working out arrangements, subject to SEC approval, with the City Bank Farmers Trust Company to issue certificates of deposit for the company's 7 per cent and 6 per cent preferred stocks and the common stock. These certificates may be sold, transferred, or otherwise used in place of the old stock certificates. Presumably this method is necessary because the stocks themselves are of doubtful legality, since the articles of incorporation were amended last year immediately following the approval of the previous recap plan by the state commission.

It appears likely that if any equity in the new company is assigned to the present common stockholders, it will be very small. In the twelve months ended March 31st there was a deficit of 22 cents a share on the common and the largest amount earned in recent years was the 25 cents a share reported in 1942. The last dividend paid was 10 cents in 1933. If the preferred arrears should be capitalized, the common stock would seem to be definitely "below water."

Water Company Stocks

IN common with other utility stocks, the water company group has enjoyed a substantial advance since last described in this department (November 9th issue). This is despite the fact that earnings appear to be in a moderate down grade, owing to rising expenses. Dividend yields on some old-line operating company stocks now average only about 4 per cent and these issues appear to have the "edge" over high-grade electric and gas company stocks in this respect.

As a result of the breakup of the holding companies, five new issues have made their appearance this year: 80,880 shares of common stock of Ohio Water Service Company (formerly controlled by Federal Water & Gas) were offered by a group headed by Otis & Co. of Cleveland at \$15.25 on April 3rd; 70,000 shares of West Virginia Water Company common stock (also sold by Fed-

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eral) were offered by Allen & Co. of New York and Shea & Co. of Boston on April 26th at \$13.50 a share, and the stock has advanced to around 17.

On March 29th Union Securities Corporation announced that a banking group headed by Kuhn, Loeb & Co. and itself had acquired all of the common stock of California Water Service Company and nearly all the stock of San Jose Water Works.

The stocks were acquired from the General Water, Gas & Electric Company, a subsidiary of International Utilities Corporation. On May 14th a group headed by Union Securities Corporation sold 116,568 shares of California Water Service at \$39 a share. The San Jose stock (79,739 shares) was offered May 14th at \$40 a share by a syndicate headed by Kuhn, Loeb and Union Securities Corporation.

On May 1st, Central Republic Company and H. M. Byllesby & Company offered 9,672 shares of California Water & Telephone common stock at \$36 a share (together with 7,000 shares of \$1.20 preferred stock).

The Use of Rights in Holding Company Liquidation

A "NEW wrinkle" has appeared in recent proposals for holding company integration plans. A press report indicates that National Power & Light may offer its common stockholders rights to purchase Pennsylvania Power & Light common. This would provide the latter company with some \$18,000,000 with which to scale down its preferred stock, bringing it more in line with written-down plant account. For several years it has been considered possible that National might have to sell its smaller holdings, Birmingham Electric and Carolina Power & Light, in order to raise the cash necessary to strengthen the financial structure of Pennsylvania Power & Light. Use of the rights would solve the problem in another way and permit distribution of the Birmingham and Carolina stocks. However, there has been no official confirmation of the plan.

Another proposed use of rights is in connection with the Columbia Gas & Electric plans, to be described later.

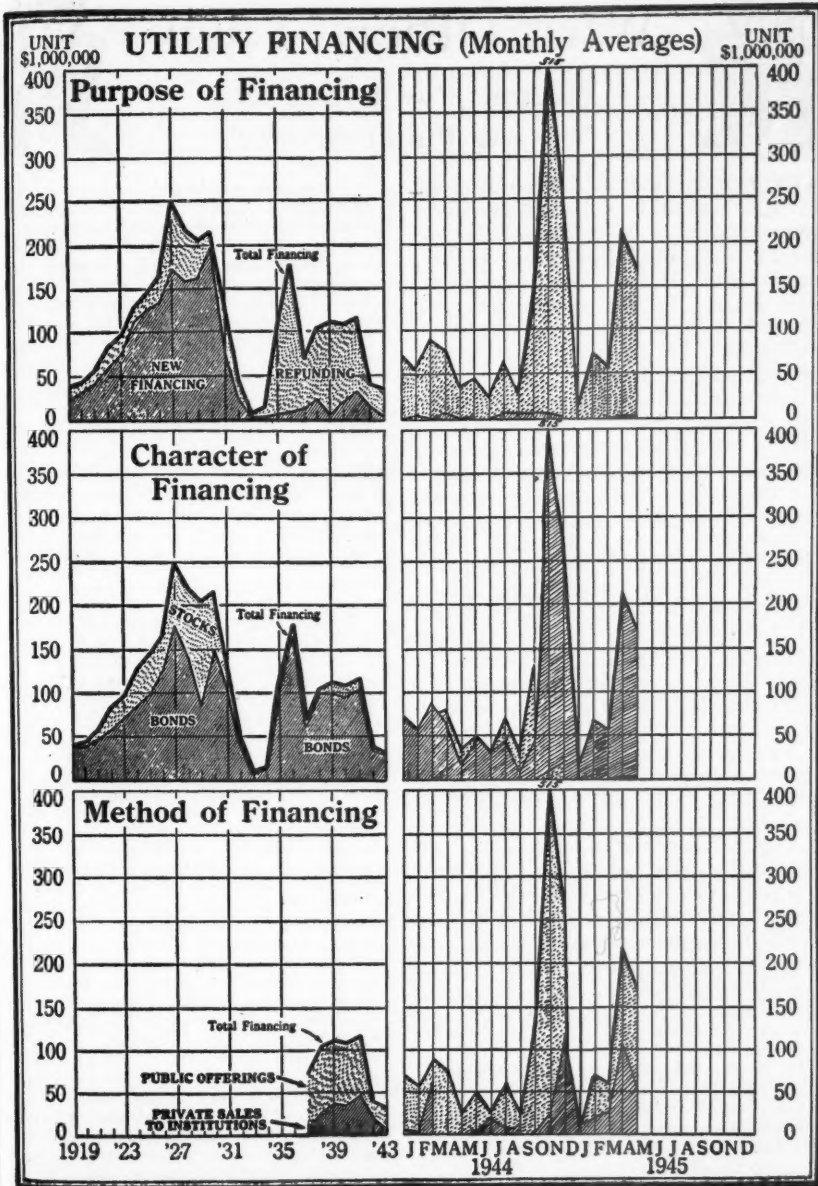


WATER COMPANY STOCKS

	Where Traded	Price About	Div. Rate	Yield About	1944 Share Earn.	Price-earn. Ratio
<i>Holding companies</i>						
American Water Works & Elec.	S	13	..	..	\$1.36	9.6
Federal Water & Gas	O	18	.90	5.0%	1.10*	16.4
General Water, Gas & Elec.	C	18	.80	4.5	1.11	16.2
Community Water Service, pfd.	O	78	..	..	7.05	11.0
Northeastern Water Co.	O	15	.50	3.4	4.32(a)	3.5
<i>Operating companies</i>						
Elizabethtown Water	O	121	6.00	5.0	7.41	16.3
Indianapolis Water A	O	24	.80	3.3	1.10	21.8
Jamaica Water Supply	O	38	2.00	5.3	2.77	13.7
Middlesex Water	O	45	2.00	4.5	2.30	19.6
Philadelphia Sub. Water	O	20	.80	4.0	2.17	9.2
Plainfield Union Water	O	67	3.40	5.1	3.67	18.3
Torrington Water	B	40	1.63(b)	4.1	1.70(b)	23.7
Hackensack Water	S	38	1.50	3.9	1.97	19.3
<i>Recent Issues</i>						
California Water & Tel.	O	36	2.00	5.6	2.78	13.0
California Water Service	O	39	2.00	5.2	2.54	15.4
West Virginia Water Service	O	17	1.00	5.9	1.72	9.9
Ohio Water Service	O	16	.90	5.6	.95	16.9
San Jose Water	O	40	2.00	5.0	2.20	18.2

S—NYSE. C—Curb. O—Over counter. B—Boston Exchange. (a) Includes substantial nonrecurring income. (b) 1943. *"Company only" report.

FINANCIAL NEWS AND COMMENT





What Others Think

Electric Power and Gas "In the Public Service"



"UTILITIES—1945" is the title of an interesting and attractive book, recently issued by the well-known investment firm of Merrill Lynch, Pierce, Fenner & Beane, 70 Pine Street, New York. The 88 pages of text, photographs, and charts in color provide much instructive, well-written information about electric power and gas in the public service. A number of pages are devoted to comments of a general nature, explanatory of certain basic factors relating to these two utilities; but most of the book is given over to detailed reviews of 24 operating companies and 19 holding companies.

Opening with some historical facts about the electric and gas industries and an outline of the processes of production, rather complete explanation is then made of the domestic and industrial phases of the business, especially in the electric field. There is also cited the important place electricity occupies in the service of health and education, with mention of the increasing uses found for its application on the farm. Attention is called to the backlog of demand for a variety of household appliances (not obtainable during the war) and the prospect of increased domestic load in postwar days.

Then, under the heading, "Facing the Facts," the following significant and frank statements appear:

So far the story of the electric and gas companies has been an extremely pleasant one—added to it is the fact that, by and large, most of them are in excellent financial position. There is, however, a darker side to the picture. The problems faced by these industries are serious and, in the opinion of many leaders in the field, threatening. Fundamentally they fall into the following categories:

1. Federal regulation
2. Federal competition
3. Municipal competition
4. High taxes

The conception, held by some, that mismanagement and questionable financial practices throughout the utilities industry were responsible for the first three of these problems, has unfairly lumped competent, forward-looking management (by far in the majority) with an infinitesimal minority. The job that management in the public utilities has done is amply proved by the average monthly bill to the domestic consumer (\$3.33) which in itself indicates what an enormous dollar value the utilities provide for their customers.

As to Federal regulation, these statements regarding the Federal Power Commission and its policies and proceedings should be helpful to the reader in casting considerable light upon that agency's activities:

Federal regulation is believed by many to be the spearhead of a trend toward complete government operation, although, to be fair, both leaders within the industries themselves and the representatives of government as well do not anticipate any such development. Nevertheless, the authority granted the Federal Power Commission and sustained by the Supreme Court of the United States is such that cynical policies, if once adopted by the commission, could very shortly bring about a chaotic condition within the industry. This, in turn, conceivably could move the government to demonstrate the desirability of taking over properties in the public interest.

While the Federal Power Commission has exercised moderation in its policies and stoutly holds that its function is to regulate not only in the public interest but in the interest of the utilities themselves, there nevertheless remains its power to establish capital valuations and to base rate of return on such valuation.

Although 6 per cent to 6½ per cent is granted as a reasonable rate of return on investments to utilities, it may, when based on a capital valuation far below the actual book worth of the corporation, reduce earnings to a vanishing point. It is true that the commission maintains that it has no such intention and that its valuations for rate bases are made in the true interests of the utilities as well as the public. The opportunity, however,

WHAT OTHERS THINK

to abuse this power is present and is high lighted by a recent U. S. Supreme Court decision in which the court held that the methods by which the commission arrived at its decisions were not open to question so long as the end achieved could be shown to be fair and equitable.

The Federal Power Commission does not have jurisdiction over rates in any but interstate or licensed hydro plant business except where no state utility commission exists. However, there have been a number of clashes between state commissions and the Federal authority on the jurisdictional question and the FPC appears to be taking every opportunity to extend its jurisdiction. Obviously, if the commission is upheld by the courts as it has been up to the present, precedents with sweeping implications will be established. . . .

According to the Federal Power Commission, a relatively small percentage of the companies within its jurisdiction already have been reviewed. It intends to prosecute its efforts until the industry has been covered completely. Although many persons consider these activities to be confiscatory in every practical sense, the commission maintains that in many cases the strict application of its policies would stabilize the return to the stockholders by providing for rate increases when earnings fall below the allowable return.

Nevertheless, it must be recognized that only through stringent efforts to comply with the spirit of the law and through constant increase in the efficiency of their service to the public, may the utility corporations hope to avoid punitive action on the part of the government.

With respect to the Securities and Exchange Commission this brief comment is made:

Another example of Federal regulation is provided by the Securities and Exchange Commission which administers the Utility Holding Company Act, including § 11 (the death sentence). Its object is to move for the divestment and/or dissolution of holding companies which do not properly serve the public interest according to statutory standards as interpreted by the commission.

Since the commission intends to continue its activities until all holding companies have been reviewed and will undertake whatever action it deems proper, securities of many operating companies may come on the market as time goes on. With regard to the effect of the commission's activities on utility stocks and bonds it may be noted that the securities of many holding companies themselves have, after initial declines from high liquidating values at the outset of SEC regulation when public confidence was disturbed, returned to former levels.

As to Federal competition, the Rural Electrification Administration's activities are described, and then this interesting statement is made:

Although REA contends that competition with private business is far from its policies, many of its opponents in and out of government believe that it will take advantage of its undoubted edge on the private corporations and actively drum up business through forming coöperatives in areas to which the utilities logically could extend power rather than work with the utilities in leaving such areas open to their development.

At the present time, the REA plans a \$500,000,000 program which has not as yet been authorized by the U. S. Congress. It should be pointed out in this respect that the policy-making personnel of the REA has been, and is likely to continue to be, sympathetic to government operation of all essential services.

Tennessee Valley Authority, another form of Federal competition, is referred to, and in brief paragraphs an exceptionally clear picture gives point to certain of the special privileges enjoyed by this particular form of governmental public power project in its operations:

The TVA holds that it operates on a businesslike basis and does not constitute unfair competition to private interests. Nevertheless it does not, in the first place, pay taxes and the tax load of the privately owned utility is a heavy one; nor, in the second place, is it required to show a profit—every private corporation is organized for that very purpose and for that reason the incentive for achieving topmost efficiency is greater.

Obviously, under these circumstances, the TVA is in a position to compete with the private utilities on a ruinous basis since it can show nonprofitable operation without loss at rates considerably lower than those that private utilities are forced to charge. The TVA maintains that it serves a dual purpose in that it not only provides electricity for those who would otherwise be without it, but also establishes a measuring stick for rate regulation and it denies any intention of competition with private utilities in the accepted sense of the word.

Brief reference is made to municipal competition and to high taxes. It may be observed that in the comment upon taxes no mention is made of the inequity of the tax-free privilege enjoyed by the Federal public power projects and the REA coöperatives as well.

Under the heading, "The Industry and

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Tomorrow," after stating that utilities are essential services with expanding markets, this pertinent observation is made:

There seems to be no danger of exhausting the natural resources upon which these industries depend. The materials needed to manufacture gas are plentiful and easy to get. The natural gas reserves are sufficient to last from fifty to one hundred years at normal rates of consumption . . . and that does not include unexplored gas fields. Coal for steam power plants is all but inexhaustible, and water power never wears out.

And this closing comment is especially to be noted—it states a truism too little appreciated by the public generally:

The industry regards itself as a public service in the best sense of the word and bends every effort to provide improved service at lower costs to the consumer—asks no more than a reasonable rate of return on the invested dollar.

What gas and electric men look forward to is the necessity for shrewdly merchandising their service to the public, and through advertising and public relations affecting, to some extent, governmental policies which apply to the utilities.

Pertinent factors which differentiate operating companies from holding companies are dwelt upon under the heading, "The Utilities and the Investor." This is written in a manner calculated to enlighten the reader upon certain essential characteristics of the electric and gas utility business and their reflection upon security values and markets—especially with respect to common stocks.

A page summary lists, in parallel columns, favorable and unfavorable factors relating to three divisions of the utility industry—electric, manufactured gas, and natural gas—while an additional page gives helpful definitions of common public utility terms.

In presenting reviews of 24 operating

companies, each is treated in a concise but comprehensive manner. The territory served and the characteristics of the business are described; capitalization, 10-year earnings records, and pertinent operating statistics are given, together with colored charts showing sources of gross revenue and trend in finances over 10-year periods.

The reviews of the 19 holding companies are equally comprehensive, but due to the difference in corporate characteristics the information is so presented as to apply to their special type of activities. The number of subsidiary operating companies is stated, with the territory served, and comments upon the industrial and domestic load, together with other informative details. Comment is made relative to the status and possible outlook (where a holding company is so affected) under the integration policies being carried out by the Securities and Exchange Commission. Tables are shown of capitalization, 10-year earnings records, and the distribution of parent companies' investments among their subsidiaries.

Colored charts indicate the sources of gross revenues, the source of income (contributed by subsidiaries) of parent company, and a 10-year comparative record of investments of the parent company as related to its debt.

Executives of business-managed utilities should find this book of interest. As a study of the electric and gas utility industry, together with the detailed reviews of many companies, it is a unique and informative compilation. As it may well have a wide distribution, it can contribute to a better understanding of this important section of free enterprise in this country.

—R. S. C.

A Report on Britain's Electric Supply

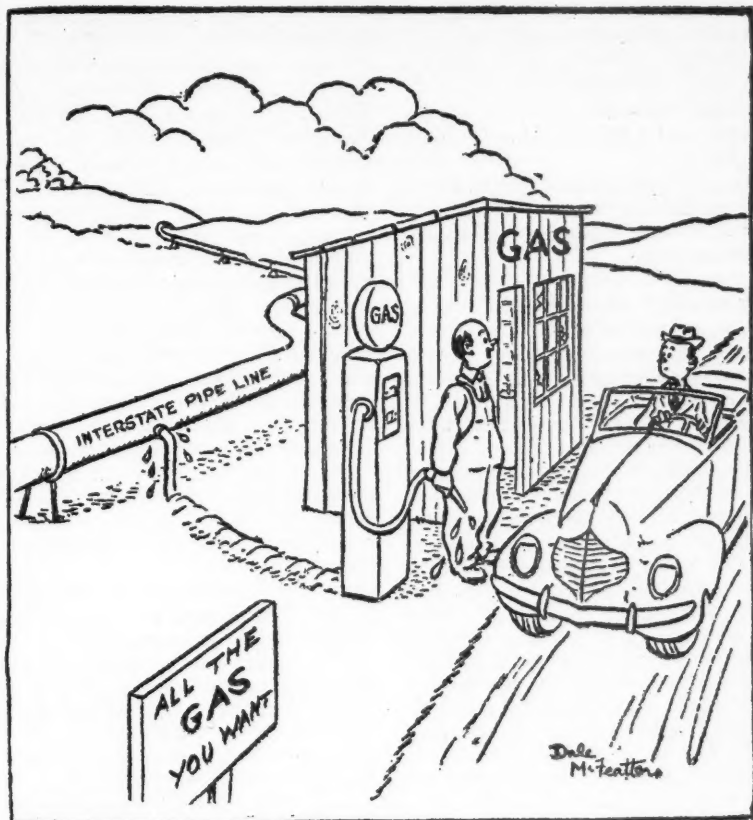
As the war ends in Europe more than usual attention might well be given the status of its public utility systems since they obviously must be reclaimed

and put back into something approaching normal operation before the people of battle-scarred Europe can pick up the thread of peaceful existence.

JUNE 7, 1945

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WHAT OTHERS THINK



Philadelphia Record

"GASOLINE SHORTAGE? WHAT SHORTAGE?"

Because Britain was so badly beaten up by Luftwaffe bombings early in the European war, and later buzz bombed, what has happened to Great Britain's electric power supply may well be an enlightening pattern of what has since happened to power supply services in other devastated European countries. For this reason the seventeenth annual report of Britain's Central Electricity Board brings us a timely analysis of these problems as of the end of 1944. The primary duty of Britain's Central Electricity Board is to supply electricity to distributing companies, to control the operation of selected generation stations, and to arrange for

extension of generating capacity for expected future demand.

Preparation of programs for the expansion of generating capacity involves forecasting the future trend of demands for electricity, and the added uncertainty resulting from the new and constantly changing conditions since the outbreak of war has greatly increased the difficulty of making such forecasts.

The total quantity of electricity generated at public supply stations in Great Britain in 1944 was 38,354,000,000 units (provisional) compared with 36,951,000,000 units in 1943, an increase of 3.8 per cent. The increase since 1939 has

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been 11,945,000,000 units or 45.2 per cent of the 1939 output.

At the end of 1944 the grid comprised 5,142 miles of transmission lines. Of these 3,614 miles were operated at 132,000 volts and 1,528 at 66,000 or lower voltages.

The grid also included 348 switching and transforming stations with an aggregate transformer capacity of 13,422,740 kilovolt amperes.

ALTHOUGH it was originally intended that the grid should be operated in large self-contained areas, it was planned as a single national system with interconnecting transmission lines between areas. The capacity of those interconnectors was small, relative to the aggregate loads in the several areas, and they were designed only for mutual assistance in cases of emergency. This national interconnection provided an added factor of security and a degree of flexibility in the system of public electricity supply throughout the country which proved invaluable in wartime. Owing to its existence, the government was able to erect new factories for war requirements in less vulnerable regions with the knowledge that supplies of electricity could be made available even if there were not sufficient generating capacity in those regions.

Bombing caused some damage to the grid but the effects on supplies of electricity were not serious. Damage caused by escaped barrage balloons, by gunfire, and other military activities was as in the previous years greater and more troublesome than damage caused by enemy action.

Repair work often had to be carried out under dangerous conditions. At the beginning of 1944 the number of selected stations was 142 with a total installed capacity of 10,984,656 kilowatts.

By the end of the year the total installed capacity of 141 selected stations was 11,254,081 kilowatts.

During 1944, 99.03 per cent of the electricity supplied by authorized utilities in the country, excluding north Scotland,

was produced at stations generating for the board.

During the year the situation regarding coal supplies to generating stations continued to cause anxiety. During the summer months stocks were built up, but the maximum reached only 3,550,000 tons compared with 3,860,000 tons in the previous year, and the deficiency was more pronounced in view of the fact that the rise in consumption of electricity involved an increase in the coal required.

Although up to the outbreak of war the steady increase in the price of coal was largely offset by progressive improvement in efficiency of generation, it prevented the reduction in the price of electricity which should have followed that improvement. The whole increase in the price of coal was therefore reflected in the average cost of coal per unit sent out, which by 1944 had risen by some 99 per cent over the 1938 level.

IN 1939 as in 1914 the outbreak of war involved a vast and immediate expansion in the manufacture of munitions. In the earlier war, expansions had been hampered by the fact that the electricity supply industry was uncoordinated, authorized utilities working in isolation, generally on a small scale, and operating at several different frequencies.

By 1939, however, the advent of the British grid had cleared away many of these technical difficulties. Standardization of frequencies and other operating improvements permitted speedy and efficient conversion to war production. First damage to grid lines came from fouling by anchor cables on escaped barrage balloons.

In November, 1939, when the war was but two months old, balloons which had broken loose in northwest England floated over the entire country, knocking out lines of 16 different utilities and damaging the Thames cables before disappearing at sea.

The British report tells us that from the outbreak of the war until the end of 1943 nearly three-fourths of approximately 2,000 incidents of war damage to

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the grid system were attributed to barrage balloons alone. The balance was almost equally divided—those resulting from direct enemy action and those occasioned by anti-aircraft protective measures, including military exercises. Dam-

age to the board's substations was less than had been anticipated and in only a few cases was there any prolonged interruption of supply. Loss of output due to enemy action never exceeded 400,000 kilowatts.

Bonneville Promotes Pacific Northwest Opportunities

An elaborate study of hydroelectric power and natural resources utilization is presented in a book, "Pacific Northwest Opportunities," issued by the Bonneville Power Administration. In 104 large pages—10½ by 15½ inches—there is set forth in text, maps, charts, and diagrams a mass of detailed information.

These data deal with the Bonneville power projects and, under a wide range of headings, give the administration's conception of the possibilities for extensive growth of industrial activity and natural resources development through the availability and utilization of its power resources.

In a foreword on the cover appears this note: "This graphic presentation of Pacific Northwest opportunities is intended to stimulate the active participation of the citizens of the Pacific Northwest and the public agencies that serve them—as well as the staff of the Bonneville Power Administration itself—in the development of the region's power and related resources. By itself, this presentation is only a framework setting out development problems of regional concern, and the possible solutions in which power can be a tool."

"Power as a tool"—that is the predominant note throughout these pages. As is stated in the preface,

This analysis is presented as a basis for a full and well-formulated program for regional power development. . . . As a Bonneville Power Administration statement, it is an attempt to put the power program, which is the particular interest of Bonneville, into its essential setting, and to show its relation to the total development of the region.

The purpose of the program and the

physical development of the region are touched upon in these extracts from the preface:

That underlying aim for the whole region and for all the agencies that serve it, is to create a stronger and better-balanced economy, by raising it further from its status of a mere colonial producer of raw material. The wastefulness of unused rich resources must be changed to wealth productively used. . . .

The entire program for physical development is based primarily on using the rivers of the region. In the Pacific Northwest the multiple-purpose project for the use of water has been found decidedly the most advantageous. It is the only feasible means of combining wide utilization and wise conservation of all land and water resources. Such river development provides for navigation, irrigation, flood control, and the production of power. It also provides industrial opportunities, directly and immediately through the actual public project, and subsequently by opening up the way to all the private uses of power.

River development, through the multiple-purpose project, has already proved itself. . . . And finally, there is power—the great modern tool. Already half the region's enormous power comes from the multiple-purpose river development projects.

Then it is asserted, under the heading, "The Place of Power in This Program," that hydroelectric power is an outstanding resource in the Pacific Northwest, that it is "a product of the river development project, and is the means of enlarging the benefits of all the other phases of the project." Naming it as the principal key to the development and use of other regional resources, various applications of power are thus listed:

. . . Power irrigation and drainage pumping facilitate reclamation. Power widens the usefulness of both farmer and crops to an indefinite horizon. Power draws minerals

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from the earth; becomes an essential ingredient in electromanufacturing; and cuts down the cost of other manufacturing. Power supplies terminal, storage, and distributing services in commerce. Power fosters the growth of many diverse industries and, available everywhere, distributes them throughout the region. Power raises the level of living in city and country. Power is the invisible magic that flows in abundance from river development and leads to regional development.

THE scope of Bonneville's transmission system is referred to, as tied in with power production:

The transmission of power is the important corollary of its production. A trunk transmission system for the Pacific Northwest was begun in 1938. The years since then, during which industry has expanded greatly, have been a commensurate growth of transmission lines, and the establishment of a region-wide power network that includes both public and private power facilities.

The great grid system, which girdles the region, makes available a large and flexible supply of power to all public and private distribution systems. At the end of 1943 the government's Columbia river power system was transmitting to large industries and the power-distributing agencies of the region 1,125,000 kilowatts, about as much as the combined capacities of all other power systems in the region.

Following these introductory comments, the statement outlines in some detail what is termed the basic physical program, with a full-page map of the region and a schematic diagram, in colors, of "principal projects, relationships, and results."

Almost all of the remainder of the book—some 85 pages—is taken up with "Power and Natural Resources Utilization," under these three divisions:

(a) Land and agricultural development—irrigation power realization.

(b) Industry and commerce development—listing a dozen or more groups, ranging through light metals, chemicals, forest products, and various industries.

(c) Domestic and commercial power development—covering rural and urban power use; electric house heating and air conditioning; electric

steam generation and transportation power utilization.

Page after page of exhaustive detail is devoted to each of these divisional subjects, in text, charts, and maps, referring to an infinite variety of products, processes, and industries—with the emphasis on the relation of power to each one.

SEVERAL pages are next devoted to the "Power System Development Program." In the preface under this heading, these statements are made as to objectives:

The fundamental purposes of the Federal government's transmission system development should be: to obtain maximum efficiency in production and transmission of the power developed; generally to insure and to distribute the economic and social benefits of power production; and to protect the great public investment in power and multiple-purpose projects, and to secure greatest practicable economic returns therefrom.

The fundamental marketing policy of the administration also has a very strong bearing upon the basic purposes and form of the government's transmission system: "The benefits of low-cost Federal hydro power should be spread over the widest possible area limited only by the economics of transmission line construction and operation."

If these fundamental purposes are to be served, another basic principle must be followed—that of sound economical construction of power-generating and transmission facilities in advance of development of promising power markets in various parts of the region.

Then follows a statement which may be considered as a declaration of a fundamental principle, and definitely characteristic of the policies of all governmental public power projects:

The central transmission system thus is necessary to carry out the fundamental concepts of public power development, to provide for delivery of energy to all localities within economic transmission range, to open markets for power generated at multiple-purpose dams and reservoirs, and to assist in making the projects self-supporting.

And, as a corollary to this, the statement adds:

The present system has been created as a basic network for the unification of Grand Coulee and Bonneville power projects and the delivery of their output to main load centers. It must be improved and expanded to

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"DAR-LING!! I'VE BEEN TRYING TO GET YOU ON THE PHONE ALL MORNING!"

serve a similar function for proposed plants and potential loads. It should seek to include new projects, to develop latent resources of land and water, to enhance and spread economic opportunity, to distribute social benefits, and not merely to develop the largest and cheapest power sources.

In scanning the pages of this Bonneville book of "Opportunities," one is impressed that for those who are especially interested in the Pacific Northwest and its future, it should be a source of much helpful information.

One is also impressed that the administration has lived up to its frank statement of the purpose of this book—it has missed no opportunity to set forth in at-

tractive terms the scope of its power-generating and transmission facilities, and the part it hopes they may play in the growth and development of that section of the country.

THIS book, with its extensive statistical studies, should be an effective piece of publicity to promote Pacific Northwest opportunities and Bonneville power. Moreover, it also contains so many statements which illustrate the underlying philosophy in the administration of these governmental public power projects, that it can well serve as a source book of information upon that phase of

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the subject of river basin developments.

There are several bills now before Congress to create regional river valley authorities. The passage of any one of these bills would affect materially the future outlook of business-managed electric utilities in the region concerned. For

enlightenment upon the methods and policies of one of the most important of the already established Federal river basin development organizations, this Bonneville Power Administration book provides instructive reading.

—R. S. C.

St. Lawrence Seaway

AN informative pamphlet has recently been issued by the Commerce and Industry Association of New York, Inc., on "The St. Lawrence Seaway Project—A Statement Advocating Its Permanent Abandonment As Economic Fallacy." The publication of this report was prompted by the continued efforts of sponsors of this power-seaway development which, despite rejection at various times in the past by Congress, is now before the House in a bill (HR 671) introduced by Representative Pittinger (Republican, Minnesota).

While the power phase is not touched upon in this report—the association issued a definitely adverse report in 1941 when the project was being advocated from the power angle in HR 4927—the data presented upon the various factors having to do with navigation tie in with the plans to generate hydro power and make instructive reading.

Comprehensive, though brief, description of the proposed project gives a clear picture of what an extensive undertaking is contemplated, and the complications involved in its successful operation.

An outline of its history from 1900 to date is given, itemizing the several times the proposal has been before Congress.

Under the general heading, "Major Factors to Be Weighed," analytical consideration is given to "cost," "benefits," and "will the benefits compensate for the cost?"

Factual information is presented upon each of these questions. The details indicate that upon several of the practical problems to be met, proponents of this development indulge in "wishful thinking" rather than giving heed to the experienced views of steamship men who are familiar with the actual conditions to be met in operating on this waterway. Fog, ice, and slow speed through inland waters all contribute to lengthened round-trip voyages and added operating cost.

The data in this pamphlet provide additional material upon this much-discussed subject. The value of this particular report is in its conciseness in presenting points — sometimes ignored — which have a very definite bearing upon the practical economic features.

Notes on Recent Publications

ELECTRIC POWER FROM THE WIND. By Percy H. Thomas. Federal Power Commission, Washington, D. C. March, 1945.

This survey was prepared by a senior engineer in the office of chief engineer of the commission. In 57 pages of text, followed by 16 pages of exhibits (tables, charts, and illustrations), is presented an interesting contribution to the question of the potentialities of the wind as a source of electrical energy.

In a foreword it is stated that the results of this initial survey are published in limited edition, so that the basic data and tentative conclusions may be studied by engineers and others interested in the subject.

THE TVA'S LESSONS FOR INTERNATIONAL APPLICATION. By Herman Finer. International Labor Office, Montreal, 1944. Studies and Reports, Series B (Economic Conditions); No. 37. 289 pp. \$2; 8s.

The March of Events



Truman Changes Cabinet

PRESIDENT Truman on May 23rd carried out a major reorganization of his Cabinet by accepting the resignations of Attorney General Francis Biddle, Secretary of Labor Frances Perkins, and Secretary of Agriculture Claude R. Wickard.

He immediately appointed Thomas C. Clark of Dallas, Texas, assistant attorney general, to be Mr. Biddle's successor; Judge Lewis B. Schwollenbach of Spokane, Washington, as Secretary of Labor; and Representative Clinton P. Anderson, Democrat of New Mexico, to succeed Mr. Wickard. The latter was nominated as director of the Rural Electrification Administration.

The President made clear that he was not making changes in the State and Treasury departments.

Asked whether Henry Morgenthau, Jr., had submitted his resignation as Secretary of the Treasury, Mr. Truman said that he had not and that if the Secretary had he would not have accepted it.

Except in the case of Mr. Wickard, the resignations will take effect June 30th. Mr. Wickard's resignation will become effective when he is confirmed as REA Administrator.

Mr. Truman is not expected in political circles to make changes in the War and Navy departments during the war. Nor has there been any indication that the resignation of Harold L. Ickes as Secretary of the Interior was imminent.

Lilienthal Confirmed

THE reappointment of David E. Lilienthal as chairman of the Tennessee Valley Authority was confirmed on May 21st by the Senate, with Senators McKellar and Stewart of Tennessee alone voting a decisive "no."

It was a voice vote and thus not one of record, but Stewart and McKellar arose in turn to ask to be recorded as in opposition to Lilienthal. The debate was brief. McKellar led off by reading a statement which he and Stewart previously had made in declaring Lilienthal "personally and politically obnoxious" to them. As he reached that phrase McKellar turned to survey the entire membership, asking them to take particular note of it.

Senator Barkley of Kentucky, the majority leader, spoke in behalf of Lilienthal's con-

fimation, saying his record as an administrator was good.

FPC Denies Gas Export

THE Federal Power Commission, in refusing last month to allow natural gas to be exported from Texas to Mexico, may have established a policy regarding use of gas for industry. The Reynosa Pipeline Company of Corpus Christi, Texas, sought to construct a line from a Rio Grande valley field to the Mexican border city of Reynosa, where it would be extended by Mexican interests to Monterrey.

The FPC dismissed the application without prejudice, contending, among other things, that there was insufficient evidence that the fuel is needed in connection with the war.

The FPC turned down the Reynosa application despite support from the Commerce Department's foreign trade division and the Office of the Coordinator of Inter-American Affairs.

Urges U. S.-state Jurisdictions

AMENDMENT of the Natural Gas Act to limit the jurisdiction of Federal agencies, such as the Federal Power Commission, to the "area of interstate transportation of gas and sale of gas in interstate commerce for resale" was proposed last month by the Petroleum Industry War Council. In an amplification of the preliminary report on a national oil policy issued on February 28th, PIWC proposed that the jurisdictions of Federal and state authorities be more clearly defined.

A 4-point program by which the Federal government can assist the industry and the states in the development, production, and conservation and utilization of oil and gas was proposed.

Ad Association Meets

IN view of travel restrictions, the Public Utilities Advertising Association will not hold its annual convention this year. Instead, the national and regional officers and directors of the association will convene for a streamlined conference at the Edgewater Beach hotel in Chicago on June 5th and 6th.

New advertising problems created by recent developments will be discussed.

PUBLIC UTILITIES FORTNIGHTLY

TVA Aids War Output

At least 75 per cent of Tennessee Valley Authority power now goes into war production, the authority estimated recently in a year-end report. The TVA was twelve years old May 18th.

Devoted mainly to war for the last five years, TVA nevertheless is becoming more closely identified with life of the river valley, the report said, pointing out that the authority has more than 300 contracts and agreements with departments of government, institutions, and localities in the valley states.

The report said that as of February 28, 1945, TVA was saving more than a half-million users some \$11,000,000 on their annual power bill. Gross power revenue to this date is \$166,703,256. Of this, \$9,959,215 has been paid in lieu of taxes. Present installed capacity is 2,184,842 kilowatts, with 32,000 more kilowatts' capacity now under construction.

In addition to building 16 dams and a 600-mile, 9-foot navigation channel, TVA has leased or established 27 parks covering more than 16,000 acres.

The report, covering the 12-year period, said nearly 19,000,000 board feet of saw timber and 18,343 cords of cordwood had been taken from TVA lands.

SEC Refuses Stay

THE request of the Associated Gas & Electric Company, the Associated Gas & Electric Corporation, and Gas & Electric Associates for a stay of all proceedings on a pending plan for recapitalization of the New England Gas & Electric Association was denied on May 17th by the Securities and Exchange Commission.

The three companies, which have claims totaling \$30,000,000 against New England, sought to have the recapitalization proceedings postponed until the issues regarding the validity, extent, and rank of their claims had been determined.

In denying the motion, the commissioners said the arguments advanced by the applicants seem to overstate the difficulties and risks faced by the claimants if the hearing proceeds as ordered beginning May 22nd. The commission admitted the issues regarding the claims "will have to be determined before we can finally pass upon the plan," but added that "since this is a time-consuming process and since we are not yet prepared to announce any conclusions with respect to the claims, it seems to us that the most orderly course is to proceed to hearing on such other aspects of the case."

The adverse decision, however, stated that the commission recognized the convenience of the applicants "might be served by an early indication of our conclusions on the claims" and "we shall endeavor to announce them through an opinion to be issued as promptly as

possible, prior to the closing of the record on the pending plan and prior to the issuance of an order or orders on the entire proceedings."

WPB Relaxes Control

FOR the first time since the United States entered the war, utilities may build new lines and other facilities up to \$25,000 worth of materials without first getting permission from Washington.

The War Production Board amended its Utilities Order U-1, covering electric, gas, and water utilities so that the \$25,000 ceiling is placed on construction which need not be approved. The order previously prohibited any construction of line extensions to serve new customers except as permitted under special supplemental orders and limited capital additions to plants to \$10,000.

At the same time, WPB amended orders which had limited purchases and inventories of watt-hour meters and small transformers needed to serve residential and farm service extensions.

Another major amendment to the order permits construction of plant improvements necessary to render service in accordance with "sound and economical standards." Previously the order held improvements to those required to keep service up to "minimum standards."

A high priority rating of AA-1 will be available for plant expansion materials up to \$10,000 except for transmission and distribution materials such as pole line hardware and transformers and meters which will get an AA-2 priority. All materials between \$10,000 and \$25,000 will get this rating.

Plans for Reconversion

IF the West is to hold its own in the reconversion race, concrete plans must be made now for rapid changeover to peacetime production by small manufacturers, Bonneville Power Administrator Paul J. Raver said recently.

Raver's statement accompanied announcement of a Bonneville program to display in a number of Northwest cities, materials, equipment, and miscellaneous hardware items used in the construction of transmission lines and substation facilities that could be manufactured in the Northwest by small industrial operators with a minimum of retooling.

The program has been developed by Bonneville's division of industrial and resources development to assist small Northwest industries in appraising the manufacturing opportunities and potential markets in the field of electric transmission and distribution line hardware and equipment.

The displays are accompanied by catalogues containing information as to quantities presently required and estimated needs for the future; methods of manufacture; descriptive material and specifications.

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"To hold economic gains already achieved in the West," Raver said, "it is as vital to keep our existing small industries busy as it is important to attract new major industries to this part of the country."

"Although the Bonneville construction program is a sizable one, its requirements are but a part of the over-all requirements in the Pacific Northwest—and possibly the entire West coast."

"We therefore hope to have other Federal agencies and public and private power groups join in the program so as to increase the overall number of items required as well as to diversify further the types of materials needed."

Raver stated that studies conducted during

the last few months in coöperation with other agencies indicated that a total of more than \$7,700,000 worth of line hardware equipment, exclusive of conductor, would be needed in the Pacific Northwest in the first three postwar years.

"As this program takes hold," Raver said, "there is no reason why its scope should not be widened to include the local manufacture of even heavier items. Considerable large plant space and equipment will be available at the close of the war. The manufacture of large turbines and generating equipment is not inconceivable and there is a certain market for both export and domestic consumption of these and other types of hydroelectric equipment."

Alabama

Favors Waterway System

THE state senate favors construction of the long-debated Tennessee-Tombigbee waterway system, and was recently reported to have asked Congress for speedy passage of the necessary legislation.

The Alabama lawmakers made known their views on the subject last month by unanimously adopting a resolution offered by Orlan B. Hill, of Lauderdale county.

The projected waterway, said the resolution,

would be generally beneficial to the nation, and would shorten by several hundred miles the water distance between midwest points and the Gulf of Mexico.

Proponents of a bill to authorize construction of the system are seeking congressional reconsideration of the proposal. The waterway was included in a recently adopted postwar rivers and harbors measure, but was stricken at the last moment.

Army Engineers were scheduled to hear arguments for the system May 28th in Mobile.

Arkansas

Would Cancel Franchise

LIEUTENANT Governor J. L. Shaver, lawyer, of Wynne has been employed by the city to examine the franchise now held by the Arkansas Power & Light Company and to take any action necessary to cancel the franchise for breach of contract, Mayor O. H. Pool announced recently.

The action was taken, the mayor said, in a

resolution adopted by the Wynne city council on May 7th. The mayor was directed to employ counsel for the purpose of canceling the franchise and advising the procedure necessary for the purchase or condemnation by the city of Wynne of the company's electric plant and distribution system in the city. Dissatisfaction with service rendered by the company to the city impelled the action by the council. The exclusive 25-year franchise has six years to run.

California

Merger Approved

CONSOLIDATION of the Niland and Calipatria water districts, with the higher Calipatria rates to prevail, by the Southern California Company, has been approved by the state railroad commission, it was announced last month in San Francisco.

The commission explained that Niland consumers had complained about poor service and that improvements would require the increase. It instructed the company to keep separate accounts for future rate studies.

Plea Amended

A RESOLUTION asking Congress to authorize plans for the erection of a power transmission line from Shasta dam to Antioch and construction of a steam stand-by plant at that city was amended in the state senate water resources committee last month, but final passage was withheld.

The resolution was opposed by Eustace Culin, attorney for the Pacific Gas and Electric Company, who declared his company is adequately serving power users in central Cali-

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fornia and there is no need for the Federal government to go into the power business, "subsidized by the U. S. Treasury."

An amendment by Senator Bradford Critten-den, Republican of Stockton, that due consideration be given the "prior claims of irrigation, flood control, navigation, and salinity control" in construction of the line was adopted. The bill was sent out to reprint and was scheduled to be heard again in a few days.

Fare Ruling Appealed

THE state supreme court was petitioned last month by the Market Street Railway in San Francisco to modify a ruling of last Sep-

tember ordering the now liquidated railway to return \$705,794 in impounded excess fares either to patrons holding receipts or the state.

The excess fares represent the cent difference between the 6-cent fare ordered in November, 1943, by the state railroad commission, and the 7-cent fare collected by the company until litigation was settled by the U. S. Supreme Court. Last September the lines were sold to the city of San Francisco, further complicating the case.

In the latest petition for modification, attorneys for the private company contend the state was not a party to the proceedings and only those patrons who hold receipts are entitled to a one-cent rebate.

Georgia

Gets Gas Rate Reduction

THE state public service commission recently announced revisions in the natural gas rates of the Georgia Power Company at Columbus which will effect savings of \$45,449 per year to the company's natural gas consumers, principally to residential users.

The revision increased large commercial and

industrial users' rates approximately \$4,899 a year, and at the same time revised and unified all gas rates of the company for natural gas service.

The company serves 8,569 consumers in the Columbus area. The new rates will reduce all gas bills in excess of the minimum bill of \$1, cutting the average customer's bill 32 cents a month.

Indiana

Cities Must Pay State Tax

INDIANA cities must pay state gross income tax on municipal business enterprises, the Indiana Supreme Court has held in a recent opinion. The ruling interpreted a 1937 amendment to the gross income tax law making cities responsible for taxes, and applied specifically to Linton, Evansville, Tipton, and Michigan City. The court held state tax is due on receipts from sale of gas, water, and electricity by the Linton municipally owned utilities; on receipts from city markets, wharfs, golf courses, sale of gasoline and oil at the airport, and sale of cemetery lots and graves at Evansville; receipts from a municipal swimming pool at Tipton; and receipts from a tennis association and compensation received for services given by the city fire department outside the city limits at Michigan City.

The higher court's decision reversed the finding of Marion County Superior Court, and was given on an appeal by the state from the superior court decision. The state's motion for new trials was sustained by the supreme court.

In the lower court, it had been held that some municipal businesses were not subject to taxation, and refunds of previously paid taxes were ordered.

In the opinion, the supreme court pointed out the Indiana general assembly, in enacting the amendment to the tax law, "may have thought

that the current trend of government into fields ordinarily occupied by private enterprise needed curbing." The amendment relieves certain utilities from property taxes, but the court held it provides that municipalities still are subject to the state tax on gross income.

Permitted to Raise Pay

CITIES operating sewage disposal plants or other public utilities may authorize additional compensation for certain city officials under terms of a 1945 legislative act now in effect, James A. Emmert, attorney general, held in a recent opinion.

Mr. Emmert, in answer to a question from Otto K. Jensen, chief examiner of the state board of accounts, held the new act authorizes "the common council of a city . . . which owns and operates a sewage disposal plant or any other utility or utilities, to provide by ordinance additional compensation for the mayor, city attorney, city engineer, city controller, and city clerk or city clerk-treasurer, either by way of per diem or salary, whether said named persons are in fact public officers or not, and whether they have a fixed term or not."

Commission Secretary Named

GOVERNOR Ralph F. Gates last month announced the appointment of Sam Busby,

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Richmond, former deputy state securities commissioner, as secretary of the state public service commission. Mr. Busby succeeded Glen L. Steckley, Bloomington, a Democrat, who had held the post the last three years.

The new commission secretary had been with the state securities commission five years. He served first as an investigator and then was in charge of criminal investigation before becoming deputy commissioner.

Kansas

Carbon Plant Authorized

THE Kansas Corporation Commission last month granted authority to the Columbian Carbon Company to build a \$1,000,000 carbon black plant near Hickok, in Grant county.

Richard B. McEntire, commission chairman, said the plant would use approximately 15,000,000 cubic feet of gas daily from the huge Hugoton sweet gas field. The company must pay the prevailing price for gas consumed which now is 4 cents a thousand.

Kentucky

City Employs Counsel

ACTION toward obtaining a reduction in electric rates from the Louisville Gas & Electric Company will be taken by the city in the near future, Mayor Wilson W. Wyatt said last month by telephone from Chicago after announcing that the city has employed Spencer Reeder, Cleveland attorney, to aid the city.

About a year and a half ago, Louis R. Howson, Chicago utility engineer employed by the city, reported after a 10-month study of the properties of the LG&E that the valuation which should be applied on the holdings for

rate-making purposes ought to mean a substantial reduction in electric rates in Louisville.

The mayor with Law Director Richard H. Hill and Lewis C. Carroll, law department assistant, met Reeder and Howson in Chicago on May 15th and discussed Reeder's employment and a course of action based on Howson's report. The conference and the employment of special counsel are moves "toward taking specific action in seeking a reduction in electric rates," the mayor said, pointing out that exactly what steps would be taken still was undecided.

Louisiana

Appeal under Advisement

THE Memphis Natural Gas Company's legal fight for a gas pipe-line right of way across Louisiana highways was taken under advisement last month by the U. S. Fifth Circuit Court of Appeals. The company had applied for an injunction to restrain the state highway department from canceling previously granted highway crossing permits.

Allen T. Shotwell of Monroe, Louisiana, company attorney, told the court that permits had been issued for 14 highway crossings August 9, 1944. He said the permits were can-

celed August 20th, one week before the Federal Power Commission heard the company's application for a certificate of public necessity to build a pipe line from Louisiana natural gas fields to Memphis consumers.

He charged that state interests were "trying to build a Chinese wall around Louisiana" and that cancellation of the permits would interfere with interstate commerce and violate the Fourteenth Amendment of the Constitution.

The gas company recently won the court's approval of the FPC certificate permitting construction of the proposed line from gas-producing areas in Louisiana to Memphis.

Maryland

Answer Filed

A MOTION asking the circuit court of Baltimore to strike out the complaint of the Rustless Iron & Steel Company against it and the Consolidated Gas, Electric Light & Power

Company was filed last month by the state public service commission.

The complaint in question was filed against the commission and utility company by the Rustless Iron & Steel Company after the state regulatory body had ruled that the rates

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charged by the utility would be considered as a whole—not separately as to gas and electricity—in the determination of proper charges for service.

At the same time, Judge Joseph Sherbow granted Philip H. Dorsey, people's counsel, the right to intervene in the suit as a defendant.

The commission's motion was based on technical grounds and directed against a 39-page bill of complaint filed by the Rustless Iron & Steel Company. In its motion, the commission alleged that the Rustless Iron & Steel Company's bill violates the general equity

rules of procedure which provide that "every bill or petition shall be expressed in terms as brief and concise as it reasonably can be, and shall contain no unnecessary recitals or documents of any kind . . . or any matter scandalous and not relevant."

The commission took issue with the section of the complaint in which the Rustless Iron & Steel Company claimed to "include all other electric customers and ratepayers" as plaintiffs, asserting that the company "has not shown, in its bill of complaint or otherwise, that it represents any ratepayer except itself."

Michigan

Refund Order Countermanded

CIRCUIT Judge Leland W. Carr on May 17th held invalid an order of the state public service commission instructing the Michigan Bell Telephone Company to rebate \$3,500,000 to its 1944 customers. The decision was expected to be appealed to the state supreme court and, meanwhile, to affect some \$10,000,000 in other rebates ordered against other utilities. The commission ordered rebates on grounds that \$3,000,000 of it represented an illegal reserve for Federal excess profits tax, that the company had increased its depreciation fund illegally by \$250,000, and that it had listed its contract with the American Telephone and Telegraph Company at \$250,000 more than it should have.

Judge Carr pointed out that the commission based its order on a section in the 1939 state law which eliminated the former public utilities commission and created the public service

commission, giving the latter broader powers. He held that if the state legislature intended to grant such wide powers, it was an unauthorized grant of legislative authority.

James H. Lee, Detroit assistant corporation counsel and the city's expert on utilities, said the city would appeal the Carr decision to the state supreme court. Lee commented:

"The decision is the exact opposite of the Michigan Supreme Court's ruling in May that the Michigan Public Service Commission's duty was to issue such rate reduction orders as would enable public utilities to avoid paying Federal excess profits taxes."

Lee said that, if Judge Carr's decision stands, "it will result in hamstringing the MPSC forever—it amounts to a virtual emasculation of the commission."

James W. Williams, assistant attorney general, said there was "a slight possibility" that Judge Carr's order would not affect the Detroit Edison Case.

Missouri

Commissioners Confirmed

THE state senate last month confirmed Governor Donnelly's reorganization of the state public service commission.

Confirmed were Morris E. Osburn of Shelbyville, designated by the governor as chairman of the commission; E. L. McClintock, Cape Girardeau; and Charles Henson, Springfield, who was reappointed.

Nebraska

To Vote on City Power

MAYOR Emil Niemann recently announced the city commission would call a special election "at the earliest possible date" to give Nebraska City an opportunity to buy the local electric system for a base price of \$873,000.

"There has been a tentative agreement between the Consumers Public Power District and your committee whereby the Consumers District will accept a base price of \$873,000

as of March 31st," said a letter from the city utility board of the city commission.

The transaction would include power plant, gas pipe line, and rural transmission lines.

"In addition to this (the \$873,000) there will be the actual cost of engineering legal expense and expense of calling Consumers bonds at premiums specified in its outstanding bond issue affecting these properties, estimated at \$45,000, plus inventory of material and supplies on hand estimated at \$10,000, less net

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earnings from March 31st to date of acquisition," the letter continued.

The statement by Mayor Niemann and the city commission said the election would be called as soon as Consumers' offer is reduced to writing.

"We concur with the utility board's recommendation and believe it is for the best interests of all citizens of Nebraska City for them to vote on and accept this proposal and acquire the electric utility for Nebraska City on the above basis in order to promote the fu-

ture welfare and prosperity of the city," the council's statement declared.

The council has approved a contract with Wachob-Bender Corporation of Omaha for financing purchase of the properties with revenue bonds at 2 per cent interest. The cost of the issue was fixed at \$5,000. In another contract signed at the same time the Omaha bond house agreed to refund the obligations of all three city utilities electric (if it is acquired), water, and gas—at the same rate of interest and an expense of \$4,500.

New York

Commission Issues Report

RATE reductions by utility companies in New York state during 1944 amounted to nearly \$3,500,000, the state public service commission announced last month in a summary of its annual report to the state legislature. Savings to the public of \$2,000,000 for 1945 are forecast on the basis of the rates that prevailed before 1944. The report declared that after three years of rising prices, the cost of gas, electricity, telephone, telegraph, water, and transportation services had not increased since the war started.

Proceedings against ten of the principal bus companies operating in New York city were in progress, the report continued. "It is a well-known fact," it asserted, "that bus service in the metropolitan area leaves much to be desired, and if the companies cannot improve their service they should be required to reduce fares. Since the report was prepared the Surface Transportation Corporation has made a reduction of \$50,000 annually and a proceeding against it has been closed."

The commission said it had encouraged the utilities to finance their needs by the sale of securities through competitive bidding.

Regarding the valuation property, figures are cited in the report to show that write-offs, ordered in original cost determinations and other proceedings, and increases in depreciation reserves have brought total improvements in company book values to more than \$300,000,000 since this work was started several years ago.

Another section of the report shows that 2,500 miles of electric lines were constructed during the year, adding that depletion of the number of available farm workers makes "adequate power for use in agricultural production a vital necessity." The commission, it said, is making efforts to bring about extension of electric service to farm areas where lines have not been built.

Utility Plans Expansion

THE Brooklyn Union Gas Company last month announced that it plans to spend

\$5,000,000 during the coming year on an expansion program that will increase the capacity of gas-manufacturing facilities by 20,000,000 feet.

Within five years after the war, according to recent surveys made by the company, 40,000,000 to 50,000,000 cubic feet may be added to current daily peak output as a result of increased use of gas for domestic and commercial purposes. The company's peak day in the current year occurred in January, when 138,000,000 cubic feet of gas was consumed. Capacity of the Greenpoint and Citizens works is about 140,000,000 cubic feet a day.

With installation at the Greenpoint plant of two additional gas generators, each capable of producing 10,000,000 cubic feet of carburetted water gas a day, the company will have eight sets of such generators in use. Other installations include new purifying equipment at the Citizens works, three new compressors, more than two miles of 42- and 48- inch high-pressure transmission mains, a high-pressure boiler with a steam-producing capacity of 60,000 pounds an hour at 650 pounds per square inch pressure, a million gallon tar storage tank, and an 8-inch oil pipe line.

Set Fare Study

THE New York City League of Women Voters decided unanimously in annual convention on May 16th to make a year's study of the 5-cent fare issue, then listened to the views of a panel of financial experts who could agree only that more revenue was needed to run the city's transit system properly.

In the discussion before the 300 delegates at the Hotel Commodore, Paul Windels, president of the City Transit Committee and former city corporation counsel, stood alone on the panel in contending that a flat increase in subway fare would provide a satisfactory solution.

The proposal winning the widest acceptance on the 5-man panel was that advanced by Morton Baum, tax consultant and former assistant corporation counsel, for an increase in the city sales tax from the present 1 per cent to 2 per cent. The extra 1 per cent, which would raise

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\$35,000,000 a year, would be earmarked for subway rehabilitation for a 3-year trial period, he said.

C. D. Williams, assistant counsel to the board of estimate at the time of subway unification, preferred an increased fare on long subway rides, the exact rate to be determined on a zoning system.

With Dr. Paul Studenski, professor of economics at New York University, acting as moderator and thus merely steering the debate, the only other speaker, Dr. John Bauer, public utility consultant and former financial and rate expert for the city, suggested token sales as a means of raising additional revenue.

Under his plan the fare might be raised to a dime for persons using coins, but those buying tokens in bulk could ride for a nickel. He contended that many persons would buy tokens and never use them, while others would drop a dime in the slot rather than carry around a pocket full of tokens. The city would make from \$10,000,000 to \$15,000,000 a year in this way, he said.

The basic opposition to the Windels proposal was that a fare increase would produce an automatic drop in the travel load, particularly on the profitable short hauls, thus not materially cutting down the system's deficit, estimated at \$41,100,000 for the current year.

Pennsylvania

Gas Association Elects

LOUIS C. SMITH, president of the Harrisburg Gas Company since 1935, was elected president of the Pennsylvania Gas Association at the thirty-seventh annual meeting held in Philadelphia on May 16th. He succeeded Charles K. Steinmetz, Pennsylvania Power & Light Company, Carlisle, Pennsylvania.

Mr. Smith was graduated from the University of Pennsylvania in mechanical engineering in 1907 and joined the United Gas Improvement Company May 18, 1908, in Philadelphia. He has been associated with the Omaha Gas Company, was president of the Fulton County Gas & Electric Company, and vice president of New York Power & Light Corporation. He served as assistant managing director of the American Gas Association.

Addressing the representatives of the manufactured gas companies comprising the Pennsylvania Gas Association, the new president said:

"The gas industry is faced with great responsibilities and the need for aggressive action has been recognized and organized to improve the postwar economics of its business and to meet competition. The American Gas Association has launched a campaign to appropriate \$1,400,000 a year for three years to finance an extended program of research, national advertising, and general promotional effort. Local gas companies not only should endorse the program of the American Gas Association but should back it up with increased local newspaper advertising and advertising in other media to promote the various uses of gas fuel."

Wisconsin

Senate Endorses "Experts"

A MEASURE that would prohibit cities and villages from hiring "experts" whose pay depends upon their ability to win an election involving the municipal acquisition of a public utility was killed by the senate last month by a 16-to-12 vote.

The senate was to reconsider the bill later, however.

The bill is designed to prevent a recurrence of campaigns similar to the 1943 fight in Madison over the city's purchase of the Madison Gas & Electric Company. It would prohibit municipalities from hiring bond houses and other "experts" to help in the acquisition of a utility if the bond firm or "experts" are to be paid only if the city takes over the utility.

"The whole question is whether you favor outside corporations coming in and sponsoring local elections in which those corporations have a financial interest," Senator Warren Knowles,

Republican of New Richmond, said.

Senator Gustave Buchen, Republican of Sheboygan, cited the Madison campaign as "a type of evil that should be eliminated."

Despite claims that outside promoters help give "the people's side" of utility questions, Buchen denounced them as "masters of the art of propaganda" and "masters in mob psychology."

Senator Charles Madsen, Progressive of Luck, admitting that utilities now are forbidden by law from entering into municipal acquisition campaigns, said that "I would have voted for them if they had brought a bill in here to allow them to present their side of the question."

Senator Fred Risser, Progressive of Madison, complained that there had been "terrific lobbying" going on in behalf of the bill, a charge denied by Senator Knowles, who challenged senators to mention a single lobbyist who had approached them on the matter.

The Latest Utility Rulings



Sale of Substation Not Subject to Regulation Under Federal Power Act

AN application of New York Power & Light Corporation for authority under § 203 of the Federal Power Act to sell a substation located in the town of Carmel, New York, to the New York State Electric & Gas Company, or in the alternative dismissing the application, was dismissed by the Federal Power Commission.

The Carmel substation was held not to be a facility for transmission or sale at wholesale of electricity in interstate commerce within the meaning of the Federal Power Act.

The substation was presently used by the applicant for the sale of electric energy to the New York State Electric & Gas Company. By means of its distribution facilities in the vicinity of the substation, supplied in part with energy from that substation, the latter company serves, among others, nineteen consumers who purchase electric energy within the state of New York but consume all or part of such

energy across the state boundary in the state of Connecticut. During 1944 sales to these consumers totaled 34,852 kilowatt hours, and the total revenue therefrom was \$1,142.67. All of the rest of the energy flowing through the substation is generated and consumed wholly within the state of New York.

It was reported that the total sales of energy to New York State Electric & Gas Company at this substation amounted to 26,291,000 kilowatt hours. The commission, in reaching its conclusion, made the finding:

None of the energy flowing through the Carmel substation originates outside the state of New York and, while an insignificant and trivial portion of that energy thereafter moves across the New York-Connecticut state boundary, such interstate movement constitutes "local distribution" rather than "transmission" of such electric energy within the meaning of the act.

*Re New York Power & Light Corp.
(Docket No. IT-5938).*



Unsupported Items Excluded from Capital Cost Accounts

THE New York commission, in a proceeding relating to the accounts and records of the Kings County Lighting Company, prescribed various accounting entries and continued the case. Items in capital accounts termed speculative and conjectural were excluded.

An item of organization expense was ordered stricken from property accounts and charged to surplus. It was stated that all organization expenses of which there could be found any trace had been allowed, and nothing but the "wildest sort

of speculation and conjecture" had been urged as a justification for the amount claimed by the company.

It had been suggested that as the company actually issued securities having a par value of over \$1,000,000 in excess of estimated actual cost of property, the difference between the two amounts should be placed in the Acquisition Adjustments Account. The commission said that in order to give this argument any basis whatever it would be necessary to establish that the securities issued to acquire

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the property had a value equal to the face value of the bonds and the par value of the stock. There was not "one scintilla of proof" in the record to that effect, and, said the commission, anyone familiar with conditions under which securities were issued by utility companies at the close of the last and the beginning of the present century knows that it would be improper to assume such a condition, and such assumption would be contrary to general experience.

A claim for cost of miscellaneous intangible capital was ordered written off to earned surplus, with the statement that, according to the requirements of the uniform system of accounts, charges properly includable in the account Miscellaneous Intangible Plant must represent the cost of patent rights, licenses, privileges, and other intangible property necessary or valuable in the conduct of the utility's gas operations and not specifically chargeable to any other account. Hypothetical and conjectural amounts, said the commission, cannot be charged

to the Miscellaneous Intangible Account.

An expense incurred because of the location of coal-handling equipment in a city street was excluded. The equipment was partially erected but not completed before the company was notified by the city that the company had no right to proceed and that it should cease and desist. This, it was held, represented no property used and useful in the service of the public.

Maintenance items from their very term, it was said, indicate they should not be in an asset account. Accounting authorities, it was said further, agree that expenses connected with the issuance of securities never belong in a property account, and certainly expenses connected with the issuance of preferred stock that has been retired and bond discount are clearly in the same category.

No allowance was made for interest during construction which had not actually been charged to property account. *Re Kings County Lighting Co. (Case 10358).*



Wisconsin River Held Navigable and License Required for Reconstruction of Dam

THE U. S. Circuit Court of Appeals, Seventh Circuit, in upholding an order of the Federal Power Commission requiring Wisconsin Public Service Corporation to apply for a license to maintain and operate a hydroelectric project on the Wisconsin river at Tomahawk in the state of Wisconsin [(1943) 50 PUR(NS) 305], held that the Wisconsin river is navigable. Reconstruction of a dam and construction of a hydroelectric plant and substation in connection therewith is, therefore, subject to license under the Federal Power Act. Authorization by the state for construction of an earlier dam did not relieve the company of license requirements.

The legal concept of navigability, said the court, is not to be determined by a formula which fits every type of stream under all circumstances and at all times, but prior decisions in this field will be

drawn upon and applied in determining whether particular circumstances render the stream a navigable river of the United States.

The court reviewed decisions on the question of navigability and reached the conclusion that the commission's order must be sustained on evidence establishing a long, regular, and commercially successful use of the stream for the transportation of logs and rafts. It was noted that the commission's determination is a determination of a factual question and must be accepted if it has warrant in the record and a reasonable basis in law.

A contention that since the logs were carried down and sold and delivered to sawmills within the state, the operations were purely intrastate in character was rejected. The Wisconsin river, it was pointed out, constitutes a continuous

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highway over which commerce is or may be carried on with the states of Iowa, Illinois, and Missouri. Moreover, the sawing of logs into lumber at the mills and the change in the mode of transportation, the court said, did not divide the

journey from the Pineries to market into two distinct, unrelated journeys, the first of which was purely intrastate and the other interstate. *Wisconsin Public Service Corp. et al v. Federal Power Commission*, 147 F(2d) 743.



Customers Not to Be Assessed to Provide For Capital Expenditures

An application by a water company for authority to raise some \$19,000 by levying assessments upon customers within a subdivision, seemingly for the purpose of paying costs incurred by the owner of the subdivision in constructing a distribution system, was denied by the California commission, with the statement:

The commission cannot authorize a utility to levy assessments upon a group of consumers for the purpose of providing money for capital expenditures. Much less may a utility assess its customers in order to raise money to be turned over to another corporation to meet such corporation's contractual obligations.

The company alleged that it could not

secure credit to pay for or refund to the tract owner any of the contract price for the construction of the water system to a new housing project. It also alleged that the present flat rate of \$1.50 a month was not sufficient to meet necessary operating expenses and had never been sufficient to pay any return on invested capital. The commission observed that if present rates failed to provide enough revenue to pay necessary operating expenses or a fair return upon an appropriate rate base, the company should seek relief by the filing of an application to establish reasonable rates. *Re Airways Water Co. Inc. (Decision No. 37667, Application No. 26407)*.



Toll Charge Authorized for Calls to Neighboring Exchange

THE Carolina Mountain Telephone Company was authorized by the North Carolina commission to place in effect a 10-cent toll charge on messages from a small exchange which it operated to the exchange of Southern Bell Telephone & Telegraph at Asheville. A monthly reduction was also made.

Facilities for interexchange service were limited so that only eight messages could be carried on between the exchanges at one time, and, as a result of free service formerly in effect, the lines were badly congested and efficient and prompt service could not be given with present facilities. The exchange had been operating at a loss. There appeared to be no practical basis for limiting calls between the exchanges.

It was said to be the policy of the legis-

lative branch of the state to require public utilities, including telephone companies, to provide adequate, efficient, and satisfactory service to the public generally located within their territory. It was also the recognized policy to permit such public utility companies to charge rates for such services which are just and reasonable and no more. It was said:

... certain patrons use the Asheville toll service far greater than do other patrons; and this commission is of the opinion that the cost of this service should be defrayed by the users of such service rather than by all users irrespective of their need or demand for such service. The commission is further of the opinion that to raise the monthly rentals in an amount sufficient to permit the petitioning company to give unlimited service on what amounts to so-called "long-distance service" would require a monthly rental rate which would be burdensome to

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a great many, if not all, of the users of telephones within the territory covered by this exchange, and also would limit and hamper the growth and extension of telephone services to all who might desire them within this territory. It is also apparent, from the evidence in the record in this case, that it is impractical and not feasible to efficiently and satisfactorily connect the 14,000 telephones on the Asheville exchange with the approximately 400 telephones on the Candler-Enka exchange, and permit such use to be unlimited as to the time that may be consumed in the use of the connecting trunk lines, and without limiting the number of calls that may be placed. While it is true that a time

limit might be placed on such calls, this commission knows of no satisfactory method that would regulate the number of calls made.

Therefore, the only effective limitation that can be made on service between different exchanges is that provided by the charge method on each call. This plan has been recognized by this commission throughout the state of North Carolina, and has been recognized by the Federal Communications Commission, an agency of the United States government.

Re Carolina Mountain Telephone Co. (Docket No. 3064).



Sale Prices Not Conclusive Evidence of Fair Value

THE Pennsylvania commission, in a rate proceeding where there was no evidence of original cost, concluded that the evidence of record was insufficient to determine fair value for rate making. Estimates of reproduction cost were found to be defective, and book cost, which was principally depreciated reproduction cost at an earlier rate, was also considered defective.

Representatives of the OPA submitted evidence of a receiver's bona fide offer for sale and also evidence of the cost to present owners of acquiring the company's securities. The commission commented on this evidence as follows:

Sale prices are not conclusive evidence of fair value, nor are they ordinarily worthy of consideration for such purpose. Sale prices in these proceedings are the lowest amounts listed as purported evidence of fair value but ownership of other utility properties in Pennsylvania has been acquired, in arm's-length transactions, at prices far in excess of any reasonable fair value that could be found for rate purposes. Obviously, sale prices of utility properties may be higher

or lower than fair value properly determined. The failure of respondent to present sufficient evidence of fair value adds nothing to the worth of sale prices as evidence of the fair value of respondent's property.

Rates were upheld, however, because upon capitalization of a return of 6½ per cent the income available for return would result in a rate base of only \$385,000, which was less than any measure of value presented by the parties to the proceeding.

Criticisms of operating expenses were considered, but the commission said that a determination of allowable expense should be based on actual expenditures adjusted by testimony founded upon fact. Such testimony does not include the unsupported opinion of a witness, unfamiliar with operations, that the company's office is overstaffed, or that actual wages paid may be adjusted arbitrarily, without the assignment of valid reasons therefor. *Borough of Yeadon et al. v. Longacre Park Heating Co. (Complaint Docket Nos. 13942-13945, 13951).*



Successor to Mutual Association Denied Authority to Operate

THE Kansas City Court of Appeals upheld the order of the Missouri commission, in *Re Peoples Teleph. Exchange* (1943) 51 PUR(NS) 6, denying JUNE 7, 1945

authority to the corporate successor of a mutual telephone association to operate as a public utility. The court sustained the commission's view that such a cor-

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poration should not be authorized to operate as a regulated utility in territory adequately served by a telephone company.

A minority commission report was based in part upon the theory that the commission had no jurisdiction to grant or deny a certificate to a corporation which has lawfully derived its title to telephone properties, and has secured operating rights, from an ownership which could lawfully operate those properties without proof of convenience and necessity. This conclusion was based on the construction of the regulatory law permitting continuance of operations begun before enactment of the law. The court answered:

The fallacy of that reasoning is that the mutual association was not subject to the act, acquired no rights under it, and, therefore, had nothing to sell but its physical properties. By the purchase, or conversion to a corporation, the applicant acquired no more than what the mutual company had a right to sell, and when the applicant desired, and undertook, to extend its activities and services into the field of a public utility, it must prove that there existed a public necessity for such service in the area it proposed to serve; and since that area was already being served by a public telephone utility, it was necessary for applicant to prove that the service of that utility was not reasonably adequate and satisfactory. We think it failed to meet these requirements.

Subscribers of the applicant had been unable to secure long-distance connections, and this was one of the main purposes in seeking a certificate to operate as a regulated public utility. The court pointed out, however, that such service could be obtained through the existing regulated company on terms and conditions approved by the commission.

Denial of operating authority was held not to result in depriving the applicant of property without just compensation in violation of state or Federal constitutions. No one, it was said, questioned the right of the mutual company to sell its property without commission approval or the right of the purchaser to purchase it and to continue to operate the properties as theretofore operated. The issue, however, was whether the applicant was entitled to abandon the former operation of the property and enter into a new field of service as a public utility.

Denial of authority, moreover, did not constitute an attempt by the commission to eliminate lawful competition which had become lawfully established in the area. The previous competition was not competition between public utilities but between a mutual organization and a regulated utility company. *Peoples Telephone Exchange v. Public Service Commission et al.* 186 SW(2d) 531.



Distribution of Scarce Telephone Instruments Not a Matter for Court

THE New York Supreme Court dismissed a petition by an attorney to compel the New York Telephone Company to remove all extension phones in residences and redistribute them to persons now without service. The court ruled that his remedy was in a proceeding which he had already instituted before the public service commission.

The complainant asked for the order on the ground that he had been unable to obtain a telephone for his residence. He alleged that there were 75,000 applicants for telephone service as of March 1st. He cited the provision of the

Public Service Law requiring every telephone corporation to give instrumentalities and facilities as shall be adequate, just, and reasonable, and not give any undue or unreasonable preference to any person.

The company's answer was that the War Production Board has nation-wide jurisdiction over the allocation of telephone facilities and the commission has jurisdiction over service. The court agreed with this contention.

Justice Peck, supreme court justice, said, however, that there seemed to be considerable merit in the claim that a fair

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distribution of telephone facilities would be aided by the company taking surplus instruments which it owns from those who have adequate service without exten-

sions, and employing those instruments to establish service for those who have no service at all. *Leighton v. New York Telephone Co.*



Man-power Shortage Causes Reduction in Streetcar Service

AUTHORITY was granted by the District of Columbia commission for a reduction in the base day service of streetcar lines so as to make possible the operation of more uniform headways and to secure more uniform car loadings with the present and continuing shortage of man power. The number of full-time operators was far below the quota required to fill all scheduled runs, man all trippers, and provide for absenteeism on account of sickness, vacations, and emergencies.

Basically the plan was to schedule fewer trips on various car lines and thereby have greater assurance that those trips would be operated, with the result that the service would adhere more closely to schedule and regular service would reduce the disparity between loadings on successive trips. The plan proposed that during the base day—that is, after the rush hour in the morning until the beginning of the rush hour in the afternoon and also after the rush hour in the afternoon and for the early part of the evening — the number of trips operated per hour over the various car lines would be reduced.

In reply to protests based on the contention that the company had failed to utilize all available sources of man

power, the utilities commission said:

Because this commission is extremely reluctant to approve any proposal which will result in the slightest diminution of available transit service, serious consideration has been given to the contentions and position of the protestants. However, the commission is unable to find anything in the statute, or its legislative history, authorizing this commission to impose its judgment upon management with respect to the employment policies of Capital Transit. The commission does not feel that it should assume such broad power without congressional approval and direction. Many employment policies are now subject to the jurisdiction of separate governmental agencies, such as wages and hours, collective bargaining, and working conditions. The subject of discrimination because of race, creed, color, or place of origin, is under the jurisdiction of the Committee on Fair Employment Practices established by executive order of President Roosevelt, and proposals are now before Congress seeking to establish this committee as a permanent part of the Federal government. This committee completed hearings in January of this year with respect to Capital Transit but as yet has not published its decision. In the light of this committee's jurisdiction, it would appear to be particularly inappropriate for this commission to assume and attempt to exercise powers for which it has not statutory authority.

Re Capital Transit Co. (Order No. 2912, PUC No. 2075/29, GD No. 1617, Formal Case No. 344).



Other Important Rulings

THE New York commission approved an examiner's report on a petition for approval of the transfer of waterworks by a public utility company to a village and held that the proposed pur-

chase price was far in excess of the value of the property and, therefore, it was against the public interest to approve the transfer upon the terms proposed. *Re Spring Brook Water Co. (Case 11388).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports*.

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COMPRISING THE DECISIONS, ORDERS, AND
RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 58 PUR(NS)

NUMBER 2

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These reports are published in five bound volumes annually, with an Annual Digest. The volumes are \$7.50 each; the Annual Digest \$6.00.

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Colorado Interstate Gas Company
v.
Federal Power Commission et al.

No. 379

Canadian River Gas Company
v.
Federal Power Commission et al.

No. 380

323 US —, 89 L ed —, 65 S Ct 829

April 2, 1945

CERTIORARI to review judgment of Circuit Court of Appeals [(1944) 54 PUR(NS) 1, 142 F(2d) 943] affirming orders of Federal Power Commission reducing natural gas rates [(1942) 43 PUR(NS) 205]; affirmed.

Appeal and review, § 28.4 — Decision of Federal Commission — Allocation of cost.

1. Courts, in reviewing a cost allocation by the Federal Power Commission under the Natural Gas Act, are not warranted in rejecting a formula employed by the Commission unless it plainly contravenes the statutory scheme of regulation, p. 69.

Apportionment, § 59 — Natural gas companies — Segregation of property.

2. The Federal Power Commission is not required, under the Natural Gas Act, to employ only an allocation formula entailing a segregation of property, p. 69.

Apportionment, § 31 — Cost allocation — Natural gas company — Demand and commodity method.

3. Adoption by the Federal Power Commission of the so-called "demand and commodity" method for allocating cost for the purpose of fixing wholesale natural gas rates, instead of segregating physical properties as between regulated and unregulated business, is not error where the pipe line of one company and the wells, gathering system, and transmission line of another company are operated as a single enterprise and the combined pipe line is used for both intrastate and interstate transactions, including direct sales to industries and wholesale sales to distributors, p. 69.

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Apportionment, § 31 — Natural gas transmission line — Wholesale and industrial sales.

4. Determination of transmission costs for a natural gas pipe line as a whole, instead of a computation on a mileage demand basis, is not erroneous in the case of a pipe line used for both intrastate and interstate transactions, including direct sales to industries and wholesale sales to distributors, where it appears that but for the direct industrial market and the wholesale market at the terminal of the line the pipe line would not have been constructed, and where it does not appear that industrial sales are being burdened with costs of a part of the system which the direct industrial gas never uses, p. 69.

Apportionment, § 31 — Natural gas transmission costs — System peak days.

5. Selection by the Federal Power Commission of a particular day as the system peak day and allocation of the capacity cost component of transmission costs on the basis of use on that day is not objectionable, although much lower mean temperatures than that prevailing on the selected day are experienced in the area (with a consequent increase in load of resale gas), where it appears that if other days were selected there would be allocated to unregulated industrial gas a larger portion of these capacity costs, p. 69.

Rates, § 13 — Authority of Federal Power Commission — Gas for ultimate distribution to public — Industrial users.

6. The Federal Power Commission has authority to fix the rate on gas sold by one regulated company to another for resale to direct industrial customers, notwithstanding the declaration in § 1(a) of the Natural Gas Act, 15 USCA § 717(a), that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, since the words "ultimate distribution to the public" imply distribution not only to domestic users but also to industrial users, p. 75.

Rates, § 13 — Jurisdiction of Federal Power Commission — Natural Gas Act — Consideration of unregulated business.

7. The provision in § 1(b) of the Natural Gas Act, 15 USCA § 717(b), that it shall not apply to the production or gathering of natural gas does not preclude the Federal Power Commission from reflecting the production and gathering facilities of a natural gas company in the rate base and determining the expenses incident thereto for the purpose of determining the reasonableness of rates subject to its jurisdiction, p. 76.

Return, § 6 — Basis — Natural Gas Act.

8. The Federal Power Commission, although it may depart from the rate base method in fixing rates, is not precluded by the Natural Gas Act from using it, p. 76.

Valuation, § 36 — Rate base — Original cost — Gas producing and gathering facilities.

9. Inclusion of natural gas production and gathering facilities in a rate base at actual legitimate cost less accrued depreciation and depletion, after rejection of estimates of reproduction cost because they were too conjectural to have probative value, was not error, p. 80.

Valuation, § 69.1 — Property cost to affiliate — Natural gas property.

10. Gas leases and producing properties are properly included in a rate base at original cost to an affiliate instead of a higher amount representing the consideration paid to the affiliate for transfer of the properties, p. 81.

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Rates, § 2 — Nature of rate making — Legislative function.

Statement by Supreme Court that rate making is essentially a legislative function, although provision has been made for judicial review of regulatory orders, p. 71.

Apportionment, § 51 — Property.

Statement by Supreme Court that a separation of properties is merely a step in the determination of cost properly allocable to the various classes of services rendered by a utility, p. 71.

Apportionment, § 4 — Allocation of cost.

Statement by Supreme Court that allocation of cost is not a matter for the slide rule, but it involves a judgment on a myriad of facts, and it has no claim to an exact science, p. 71.

Gas, § 1 — Scope of Natural Gas Act — Ultimate distribution to public — Industrial users.

Discussion by the Supreme Court of the declaration in § 1(a) of the Natural Gas Act that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and criticism of contention that words "ultimate distribution to the public" imply distribution to domestic users alone, since industrial users are as much a part of the public as domestic users and other commercial users, distribution to one being as "ultimate" as distribution to the other, p. 75.

Rates, § 13 — Jurisdiction of Federal Power Commission — Sales between companies in integrated system.

Discussion by Supreme Court of suggestion that when the Federal Power Commission treats two natural gas companies as an integrated system for purposes of allocation of costs, it should limit its rate reduction order to those rates over which it would have jurisdiction if the two companies were in fact one, excluding direct sales to industrial users, p. 75.

Expenses, § 135 — Natural gas company — Commodity cost.

Discussion by Supreme Court of argument that correct procedure is for Federal Power Commission to allow in operating expenses of a natural gas company, whose rates it is empowered to fix, the fair field price or fair market value, as a commodity, of the gas which finds its way into the transmission lines for interstate transportation and sale, p. 78.

Valuation, § 7 — Authority of Federal Power Commission — Natural Gas Act.

Discussion by Supreme Court of the authority of the Federal Power Commission under the Natural Gas Act to investigate cost, fair value, and other matters for rate-making purposes, p. 79.

Valuation, § 373 — Natural gas leaseholds.

Discussion by the Supreme Court of the inclusion of natural gas leaseholds in a rate base at cost instead of present market value, p. 80.

(JACKSON, J., concurs in separate opinion; STONE, C.J., ROBERTS, REED, and FRANKFURTER, JJ., dissent in part.)

APPEARANCES: William A Dougherty, of New York city, argued the cause for petitioner in No. 379; Charles V. Shannon, of Washington, D. C., argued the cause for respondents in No. 379; John P. Akolt, of Denver, Colorado, and Charles H. Keffer, of Amarillo, Texas, argued the

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cause for petitioner in No. 380; Chester T. Lane and Charles V. Shannon, both of Washington, D. C., argued the cause for respondents in No. 380; Carl I. Wheat, of San Francisco, California, argued the cause for Independent Natural Gas Association of America, as amicus curiae, by special leave of court.

Mr. Justice DOUGLAS delivered the opinion of the court: The Federal Power Commission after an investigation and hearing entered orders under § 5 of the Natural Gas Act of [June 21] 1938 (52 Stat 821, 823, Chap 556, 15 USCA § 717d, 4 FCA title 15, § 717d) finding the interstate wholesale rates of petitioners to be excessive by specified amounts per year and requiring petitioners to reduce the rates accordingly. 43 PUR(NS) 205. The circuit court of appeals for the tenth circuit affirmed the Commission's orders. (1942) 142 F(2d) 943. The cases are here on petitions for certiorari which we granted, limited to the few questions to which we will presently advert.

Petitioners (to whom we will refer as Canadian and as Colorado Interstate) had their origin in an agreement made in 1927 between Southwestern Development Co. (Southwestern), Standard Oil Co. (N. J.) (Standard) and Cities Service Co. (Cities Service). It was the purpose of the agreement to bring natural gas from the Panhandle field in Texas to the Colorado markets, including Denver and Pueblo. Southwestern agreed to transfer through a wholly owned subsidiary, Amarillo Oil Co. (Amarillo), certain gas leaseholds and producing properties to a new subsidiary (Canadian) which it would organize

for that purpose. Standard agreed to form a new corporation (Colorado Interstate) and to finance its construction of pipe-line facilities which would connect with Canadian's facilities and transport gas from those points in the Panhandle field to the Colorado markets. Cities Service agreed to use its best efforts to obtain franchises through its subsidiaries under which the natural gas could be distributed in certain cities in Colorado including Denver and Pueblo. The gas was to be sold to Colorado Interstate by Canadian at cost (as defined in the contract) for at least twenty years from 1928. We will return to other details of this tripartite agreement and of the organization and financing of Canadian and Colorado Interstate. It is sufficient here to say that the companies were incorporated, the pipe line was built, and the business put into operation. Although Canadian and Colorado Interstate are separate companies, the Commission found that their properties have been operated as a single enterprise.

Canadian produces from its own properties all the gas which it sells. It has about 300,000 acres of natural gas leaseholds and on December 31, 1939, was operating 94 wells. Its gathering system consists of approximately 144 miles of pipe. It owns and operates a transmission line which connects with its gathering system in the Panhandle field and ends about 85 miles distant at a point near Clayton, New Mexico. Canadian sells some of its gas at the wellhead and along the Texas portion of its transmission line for consumption in Texas. It also sells gas for resale in Clayton, New Mexico. But the chief portion

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of the gas in its transmission line is sold at that point to Colorado Interstate. The pipe line of Colorado Interstate extends to Denver. It sells the gas to various distributing companies for resale by them in Colorado and in a few points in Wyoming.¹ Colorado Interstate also sells gas from this pipe line direct to industrial customers in Colorado for their own use.

It is thus apparent that the pipe line from Texas to Colorado serves three different uses: (a) intrastate transportation and sale in Texas; (b) interstate transportation and sale to industrial customers; and (c) interstate transportation to distributing companies for resale. Only some of those activities are subject to the jurisdiction of the Commission. For § 1(b) of the act 15 USCA § 717(b), 4 FCA title 15, § 717(b) provides:

"The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

It is around the meaning and im-

plications of that provision that most of the present controversy turns.

[1-5] *Allocation of Cost of Service.* The questions raised by Colorado Interstate and some of those raised by Canadian relate to the failure of the Commission (1) to separate the physical property used in common in the intrastate and interstate business; (2) to separate that used in common in the sales of gas to industrial consumers and the sales of gas for resale; and (3) to separate the property used exclusively in intrastate business or exclusively for industrial sales. The Commission thought it unnecessary to make such a separation of the properties. It noted that nowhere in the evidence presented by petitioners was there "a complete presentation of the entire operations of the company broken down between jurisdictional and non-jurisdictional operations." 43 PUR(NS) at p. 232. And it concluded, "All that can be accomplished by an allocation of physical properties can be attained by allocating costs including the return. The latter method is by far the most practical and businesslike." *Id.* p. 232. The Commission adopted the so-called "demand and commodity" method for allocating costs. *Cf.* *Arkansas Louisiana Gas Co. v. Texarkana* (1938) 24 PUR(NS) 267, 96 F(2d) 179, 185. It took the costs and divided them into three classes—volumetric, capacity, distribution.² Costs relating to the production system were treated as

¹ The latter resales are made by Colorado-Wyoming Gas Co. which transports the gas from a point near Littleton, Colorado, to Cheyenne, Wyoming. The proceedings against this company were consolidated with those against Canadian and Colorado Interstate. The Commission also ordered a reduction in the rates charged by Colorado-Wyoming Gas

Co. That order is here for review on certain points in No. 575, decided today [323 US —, 89 L ed —, 58 PUR(NS) *post*, p. 94, 65 S Ct 850].

² The Commission in its report characterized volumetric costs as variable costs and capacity costs as fixed costs. 43 PUR(NS) at p. 232.

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volumetric.³ These included rate of return and depreciation and depletion on leases and wells. These volumetric costs were allocated to the customers in proportion to the number of thousand of cubic feet delivered to each customer in 1939. The larger share of the transmission costs of the Denver pipe line were classified as capacity costs. Supplies and expenses of compressing systems, maintenance of compressing system equipment, and accruals for its depreciation were classed as volumetric. And one-half of the return and income taxes on the Denver pipe line and one-half of operating labor on the compressing system were classed as volumetric, the other half being classed as capacity. Capacity costs were allocated to the customers in the ratio that the thousand cubic feet sales to each customer on the system peak day of February 9, 1939, bore to the total sales to all customers on that day. Distribution costs were composed in part of depreciation, taxes, and return on investment in metering and regulating equipment through which gas is delivered at individual stations to each customer. These were allocated to each customer in the ratio which the investment for each customer bore to the total invest-

ment in such facilities which were available to serve all customers. Distribution costs also included operating and maintenance expenses incurred in operating the metering and regulating stations. These were allocated on the basis of the number of stations.

The function which an allocation of costs (including return) is designed to perform in a rate case of this character is clear. The amount of gross revenue from each class of business is known. Some of those revenues are derived from sales at rates which the Commission has no power to fix. The other part of the gross revenues comes from the interstate wholesale rates which are under the Commission's jurisdiction. The problem is to allocate to each class of the business its fair share of the costs. It is of course immaterial that the revenues from the intrastate sales or the direct industrial sales may exceed their costs, since the authority to regulate those phases of the business is lacking. To the extent, however, that the revenues from the interstate wholesale business exceed the costs allocable to that phase of the business, the interstate wholesale rates are excessive. The use of that method in these cases produced the following results:

<i>Canadian</i>			
	Revenues	Costs	Excess Revenue Over Costs
Regulated	\$2,151,000	\$1,590,000	\$561,000
Unregulated	242,000	188,000	54,000
<i>Colorado Interstate</i>			
	Revenues	Costs	Excess Revenue Over Costs
Regulated	\$4,438,000	\$2,373,000	\$2,065,000
Unregulated	1,335,000	1,204,000	131,000

The Commission did not include in the rate reductions which it ordered

any of the excess revenues over costs from the unregulated business. The reductions ordered were measured solely by the excess revenues over costs

³ A residual refining credit was determined and deducted from production costs.

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in the regulated business, viz., \$2,065,000 in case of Colorado Interstate and \$561,000 in case of Canadian.

Colorado Interstate and Canadian make several objections to that method. They maintain in the first place that a segregation of the physical property based upon use is necessary so that the payment due for the use of that property which is in the public service may be determined. Reliance for that position is rested on the Minnesota Rate Cases (*Simpson v. Shepard*) (1913) 230 US 352, 435, 57 L ed 1511, 1556, 33 S Ct 729, 48 LRA(NS) 1151, Ann Cas 1916A 18, and *Smith v. Illinois Bell Teleph. Co.* 282 US 133, 146, 75 L ed 255, 261, PUR1931A 1, 51 S Ct 65. Those were cases which involved state regulation of intrastate rates of companies doing both an intrastate and interstate business. But the rule fashioned by this court for use in those situations was not written into the Natural Gas Act. Congress indeed prescribed no formula for determining how the interstate wholesale business, whose rates are regulated, should be segregated from the other phases of the business whose rates are not regulated. Rate making is essentially a legislative function. *Munn v. Illinois* (1877) 94 US 113, 24 L ed 77. Congress to be sure has provided for judicial review of the Commission's orders. Section 19, 15 USCA § 717r, 4 FCA title 15, § 717r. But that review is limited to keeping the Commission within the bounds which Congress has created. When Congress, as here, fails to provide a formula for the Commission to follow courts are not warranted in rejecting the one which the Commission employs unless it plainly contravenes the stat-

utory scheme of regulation. If Congress had prescribed a formula it would be the duty of the Commission to follow it. But we cannot say that under the Natural Gas Act the Commission can employ only one allocation formula and that that formula must entail a segregation of property. A separation of properties is merely a step in the determination of costs properly allocable to the various classes of services rendered by a utility. But where as here several classes of services have a common use of the same property difficulties of separation are obvious. Allocation of costs is not a matter for the slide rule. It involves judgment on a myriad of facts. It has no claim to an exact science. *Hamilton, Cost as a Standard for Price*, 4 Law & Cont. Prob. 321. But neither does the separation of properties which are not in fact separable because they function as an integrated whole. Mr. Justice Brandeis, speaking for the court in *Groesbeck v. Duluth, S. S. & A. R. Co.* 250 US 607, 614, 615, 63 L ed 1167, 1172, PUR1920A 177, 40 S Ct 38, noted that "it is much easier to reject formulas presented as being misleading than to find one apparently adequate." Under this act the appropriateness of the formula employed by the Commission in a given case raises questions of fact not of law.

Colorado Interstate claims that the Commission's formula ignored or at least failed to give full effect to the priority which the wholesale gas has over direct industrial sales—a priority recognized in the contracts with industrial users and in the municipal franchises. But over the years the interruptions or curtailments in service to direct industrial customers appear to

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have been slight.⁴ Moreover, to the extent that the priority accorded wholesale gas was actually exercised during the test year (1939) the allocation of costs made by the Commission gave full effect to it. As we have seen, volumetric costs were allocated to the customers in proportion to the number of thousand cubic feet delivered to each customer during the year; capacity costs were allocated in the ratio that the thousand cubic feet sales to each customer on the system peak day bore to the total sales on that day. The formula used reflected all actual curtailments of load to each customer during the year and on the system peak day.

Colorado Interstate objects because the Commission treated the transmission line as a unit. It points out that some laterals and equipment (such as metering stations) are used exclusively for making wholesale sales, some are used exclusively for making intrastate sales for direct industrial sales, and some are used in common in varying degrees by the several classes of business. It is pointed out, for example, that the line north of Pueblo is used almost exclusively by the regulated business but that under the Commission's formula the pipe line was treated as if all the gas went into the pipe in Texas and came out at the Denver city gate. These objections are partially met by the manner in which distribution costs, to which we have referred, were allocated. But that is no more than a partial answer since they pertained only to metering and regulating equipment. The laterals were not segregated. They, however, appear to be used more commonly

for direct industrial rather than for wholesale sales; and we are not convinced that the direct industrial sales were saddled with greater costs than they would have been had the laterals been segregated. The gravamen of this complaint is that the industrial sales are being burdened with costs of a part of the system which the direct industrial gas never uses. That contention points up our earlier observation that judgment and discretion control both the separation of property and the allocation of costs when it is sought to reduce to its component parts a business which functions as an integrated whole. The Commission found that but for the direct industrial market at Pueblo, Colorado, and the wholesale market at Denver, the pipe line would not have been constructed. 43 PUR(NS) at p. 210. It is therefore obviously fair to determine transmission costs for the pipe line as a whole and not to compute them on a mileage demand basis. In that way the beneficiaries of the entire project share equitably in the cost. To allow the costs to accumulate the closer the gas gets to Denver would be to assume that the extension to Denver was a separate project on which the earlier customers were in no way dependent. These circumstances illustrate that considerations of fairness, not mere mathematics, govern the allocation of costs. Cf. *Wabash Valley Electric Co. v. Young*, 287 US 488, 499, 77 L ed 447, 455, PUR1933A 433, 53 S Ct 234. What we have said also answers Canadian's complaint that the wholesale sales in Texas for consumption in the towns of Dalhart, Hartley, and Texline, Texas, are burdened with too large a share of transmission costs.

⁴ Fifteen times in some twelve years.

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We can see in this situation no difference between those customers and the ones located at more distant points on the pipe line.⁶

Colorado Interstate objects to that part of the Commission's treatment of transmission costs whereby it assigned 50 per cent of the return to capacity costs and 50 per cent to volumetric cost. The contention is that the entire return on the transmission facilities should be apportioned to capacity costs on the theory that the volumetric costs have no relation to the property required for meeting the maximum demands of the wholesale business and that the method employed departs from the requirements of a fair return on the property devoted to the public service. But as we have seen capacity costs were allocated to customers in the ratio that the thousand cubic feet sales to each customer on the system peak day bore to the total sales to all customers on that day. It is not apparent why direct industrial sales should carry a lighter share of the costs merely because their use of the pipe line may be less on the system peak day. As the Commission points out, if the method advanced by Colorado Interstate were used, the amount paid by the industrial customer for transportation of the gas through the pipe line would be measured not by the customer's use throughout the year, which might be substantial, but by its use on the system peak day which might be slight. In that event the industrial customer would obtain

to an extent free transportation of gas.

Colorado Interstate also makes objection to the selection and use of February 9, 1939, as the system peak day and the allocation of the capacity cost component of the transmission costs on the basis of use on that day. It is argued that the mean temperature for that day was 8° Fahrenheit above zero, that much lower mean temperatures are experienced in the Colorado area, that as the temperature drops the load of resale gas rapidly increases, and that if these capacity costs were allocated on the basis of use during the coldest day the resale gas would carry a greater portion of them. We do not stop to develop the point. We have carefully considered Colorado Interstate's contention. As we read the record, if either of the days selected by Colorado Interstate were taken as the system peak days, there would be allocated to the industrial gas a larger portion of these capacity costs than the Commission allocated. On that showing we cannot say that the choice of February 9, 1939, was unfair.

Colorado Interstate and Canadian object to the Commission's use of the return. The Commission included in the total cost of service for these companies a 6½ per cent return on the rate base.⁶ In other words, the 6½ per cent return was computed on the basis of all the property used by petitioners in their various classes of business—intrastate sales, direct industrial sales, and interstate wholesale sales.⁷ Now

⁶ So far as appears Canadian presented no evidence showing the cost of these intrastate sales.

⁶ As we have said, the return on leases and wells was treated as volumetric costs; 50 per cent of the return on the Denver pipe line was treated as volumetric and 50 per cent as

capacity costs; and return on investment in metering and regulating equipment was treated as distribution costs.

⁷ As respects the accounting for the cost of money invested in the enterprise see Schlatter, *Advanced Cost Accounting* (1939), Chap XII; Neuner, *Cost Accounting* (1942), p.

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it is apparent that if the reduction ordered was based on the excess of revenues from all classes of business over the aggregate costs, the result would be to reduce to a common level the profits from each class. In that case, whenever a company was making a higher return on its unregulated business than the rate of return allowed for the regulated business, the excess earnings from the unregulated part would be appropriated to the entire business. When the unregulated business was being operated at a loss or at less than the return which was allowed, excess earnings from the regulated business would be appropriated to the unregulated business. A low rate might therefore be concealed by siphoning earnings from the unregulated business; a high rate might be built up by making the regulated business share the losses of the unregulated one.

It is said that that is what happened here. But that is not true. As we have seen, the Commission ordered a rate reduction based solely on the excess of revenues over costs (including return) derived from the regulated business. None of the excess revenues over costs (including return) from the unregulated business was included in that reduction. If the Commission in determining costs of the unregulated business had used a higher rate of return, it would have increased the costs of that business and reduced the excess revenues allocable to it. But since un-

der the Commission's method of allocation the amount of that excess would not be reflected in the reduction ordered, there would be no difference in result.

The cases are presented as if the 6½ per cent allowed by the Commission on the rate base limits the earnings from the whole enterprise to 6½ per cent. That also is not true. The return merely measures the earnings allowed from the regulated business. As we have noted, the excess of earnings which Colorado Interstate makes from direct industrial sales (on the basis of 6½ per cent return) is \$131,000 annually. The Commission pointed out (43 PUR(NS) at p. 230) that if Colorado Interstate "retains these earnings in excess of a 6½ per cent rate of return on its sales to these customers, its rate of return on its entire business is increased to approximately 8 per cent after placing into effect the reductions in rates ordered herein."

Of the other objections made by Canadian and Colorado Interstate on this phase of the case, we need mention only one.⁸ It is contended that the findings of the Commission on the allocation of costs are inadequate and that the cases should be remanded to the Commission so that appropriate findings may be made. The findings of the Commission in this regard leave much to be desired since they are quite summary and incorporate by reference the Commission's staff's exhibits on

277; Lawrence, *Cost Accounting* (1930), chap. 22.

⁸It is objected that the allocation made by the Commission results in discrimination between purchasers of gas from Colorado Interstate as indicated by the fact that costs allocated to one customer who is distant from Denver are greater than costs allocated to another customer at Denver. But all the Com-

mission did was to order an aggregate reduction in the wholesale rates of \$2,065,000 so as to produce a fair return. The adjustment of the rate schedules for various delivery points has not yet been made. See *Federal Power Commission v. Natural Gas Pipeline Co.* (1942) 315 US 575, 584, 86 L ed 1037, 1048, 42 PUR(NS) 129, 62 S Ct 736.

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allocation of cost. But the path which it followed can be discerned. And we do not believe its findings are so vague and obscure as to make the judicial review contemplated by the act a perfunctory process. Cf. *United States v. Chicago, M. St. P. & P. R. Co.* (1935) 294 US 499, 79 L ed 1023, 55 S Ct 462; *United States v. Carolina Freight Carriers Corp.* (1942) 315 US 475, 86 L ed 971, 43 PUR(NS) 423, 62 S Ct 722.

[6] *Canadian's Sales to Colorado Interstate.* The Commission ordered a blanket reduction of \$561,000 in the sales price of all types of gas sold by Canadian to Colorado Interstate. A substantial part of that gas is sold to Colorado Interstate for resale to direct industrial customers. Canadian maintains that the Commission has no authority to fix the rate on the sale of that portion or class of gas to Colorado Interstate. Section 1(b) of the act, however, provides, as we have noted, that the provisions of the act apply "to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use." Canadian however seeks support for its position in the declaration in § 1 (a) of the act that "the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest." But we find no warrant for saying that the words "ultimate distribution to the public" imply distribution to domestic users alone. Industrial users are as much a part of the "public" as domestic users and other commercial users. And the distribution to one is as "ultimate" as the distribution to the other. Moreover, that declaration of policy

may not be used to take out of § 1(b) of the act the express provision subjecting to regulation gas sold for resale for "industrial use." Furthermore, the declaration of policy contained in § 1(a) is not as narrow as Canadian suggests. For § 1(a) goes on to say that Federal regulation in matters relating to "the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest." Sales for resale to industrial users is embraced in the broad sweep of that language. Canadian also seeks support for its position from the proviso in § 4(e) of the act, 15 USCA § 717c(e), 4 FCA title 15, § 717c(e) that the Commission shall not have authority to suspend the rate "for the sale of natural gas for resale for industrial use only." Canadian infers from that provision that such rates are not subject to regulation by the Commission. The short answer, however, is that the authority of the Commission to suspend rates is restricted to rates over which it has jurisdiction. If the Commission had no authority over the rates in question, the proviso in § 4(e) would be unnecessary. Accordingly, it seems clear that all of the gas sold by Canadian to Colorado Interstate for resale, including that sold for resale for industrial use, is subject to rate regulation by the Commission.

There is the further suggestion in Canadian's argument that since the Commission treated Canadian and Colorado Interstate as an integrated system for purposes of allocation of costs, it should have limited its rate reduction to those rates over which it would have jurisdiction if the two companies were in fact one. It is

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argued that in such event there would be no sales between Canadian and Colorado Interstate and the latter's direct sales to industrial users would not be subject to the jurisdiction of the Commission. The difficulty is that Colorado Interstate purchases its gas from Canadian and the purchase price is the interstate wholesale rate which is an operating expense on which Colorado Interstate's resale rates are computed. Moreover, Canadian as required by § 4(c) of the act has its rate to Colorado Interstate in a rate schedule on file with the Commission. Unless and until a new rate schedule was filed or the old schedule changed by the Commission, that rate would have to be exacted by Canadian and paid by Colorado Interstate. Section 4(d). That rate therefore could hardly be maintained if Colorado Interstate were allowed as an operating expense a lesser amount for the gas it purchases from Canadian.

[7, 8] *Producing and gathering facilities.* Section 1(b) which we have already quoted states that the provisions of the act "shall not apply . . . to the production or gathering of natural gas." The Commission determined a rate base which includes Canadian's production and gathering properties as well as its interstate transmission system. The return allowed by the Commission was limited to 6½ per cent of the rate base so computed. The Commission made an allowance for working capital to enable Canadian to carry on its production and gathering operations. The Commission made an allowance for Canadian's operating expenses which included the cost of producing and gathering natural gas. The Commis-

sion applied its formula for allocation of costs to Canadian's production and gathering properties as well as to its other facilities. Thus Canadian contends that contrary to the mandate of § 1(b) the Commission has undertaken to regulate the production and gathering of natural gas. Reliance for that position is sought from other provisions of the act. It is pointed out that § 1(a) declares that "the business of transporting and selling natural gas" for ultimate distribution to the public is affected with a public interest and that Federal regulation "in matters relating to the transportation of natural gas and the sale thereof" in interstate commerce is necessary in the public interest. Transportation and sale do not include production or gathering. Other sections emphasize that distinction. Thus § 4 and § 5, the rate regulating provisions of the act, refer to charges for the "transportation or sale of natural gas, subject to the jurisdiction of the Commission." Section 7(a), 15 USCA § 717f(a), 4 FCA title 15, § 717f(a) relates to the extension or improvement of "transportation facilities"; § 7(b) to the abandonment of "facilities subject to the jurisdiction of the Commission"; § 7(c) to the construction or extension of facilities for the "transportation or sale of natural gas, subject to the jurisdiction of the Commission." It is pointed out that apart from § 1(b) only a few sections of the act refer to "production." Section 5(b) gives the Commission power to investigate "the cost of the production or transportation of natural gas by a natural gas company in cases where the Commission has no authority to establish a rate governing the trans-

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portation or sale of such natural gas." This goes no further, it is said, than to aid state regulation. Section 9(a), 15 USCA § 717h(a), 4 FCA title 15. Section 717h(a) authorizes the Commission to ascertain and determine and by order fix "the proper and adequate rates of depreciation and amortization of the several classes of property of each natural gas company used or useful in the production, transportation, or sale of natural gas." Section 9(a) further provides that no natural gas company subject to the jurisdiction of the Commission shall charge to operating expenses "any depreciation or amortization charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a percentage of depreciation or amortization other than that prescribed therefor by the Commission." These are said, however, to be no more than accounting requirements and distinct from the fixing of rates to be charged for public utility or transportation services. That distinction is emphasized, it is said, by the proviso in § 9(a) that "Nothing in this section shall limit the power of a state Commission to determine in the exercise of its jurisdiction, with respect to any natural gas company, the percentage rates of depreciation or amortization to be allowed, as to any class of property of such natural gas company, or the composite depreciation or amortization rate, for the purpose of determining rates or charges." The provisions of § 10(a), 15 USCA § 717i(a), 4 FCA title 15 § 717i(a) which give the Com-

mission authority to require reports from natural gas companies as to their assets and liabilities, the "cost of maintenance and operation of facilities for the production" of natural gas and the like are said to be mere information requirements quite consistent with the absence of power to regulate the production and gathering of natural gas.⁹ See *Interstate Commerce Commission v. Goodrich Transit Co.* (1912) 224 US 194, 56 L ed 729, 32 S Ct 436. And the authority given the Commission by § 14(b), 15 USCA § 717m(b), 4 FCA title 15, § 717m(b) is said merely to supplement the Commission's powers under sections of the act. Section 14(b) grants the Commission power to determine "the adequacy or inadequacy of the gas reserves held or controlled by any natural-gas company" and "the propriety and reasonableness of the inclusion in operating expenses, capital, or surplus of all delay rentals or other forms of rental or compensation for unoperated lands and leases." This is said to supplement the Commission's authority over the construction, extension, or abandonment of facilities or service under § 7, the determination of amortization rates under § 9(a), and the accounting requirements of § 8.

Support for Canadian's position is also sought in the legislative history of the act. It is pointed out that the declared purpose of the legislation was to occupy the field in which this court had held the states might not act. See *Federal Power Commission v. Hope Nat. Gas Co.* (1944) 320 US 591, 609, 610, 88 L ed 333, 348, 349, 51

⁹ Another section of the act which refers to "production" is § 11(a), 15 USCA § 717j(a), 4 FCA title 15, § 717j(a). It gives the Commission certain functions to perform

where two or more states purpose compacts dealing with the conservation, production, transportation, or distribution of natural gas.

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PUR(NS) 193, 64 S Ct 281. And it is noted that Senator Wheeler, who sponsored the legislation in the Senate, said during the debate in answer to an inquiry whether the bill undertook to regulate the production of natural gas or the producers of natural gas. "It does not attempt to regulate the producers of natural gas or the distributors of natural gas; only those who sell it wholesale in interstate commerce." 81 Cong. Rec. p. 9312.

From these various materials it is argued that the Commission has no authority to include producing or gathering facilities in a rate base or to include production or gathering expenses in operating expenses. It is said that when the Commission follows that course, it regulates the production and gathering of natural gas contrary to the provisions of § 1(b) of the act. It is argued that the correct procedure is for the Commission to allow in the operating expenses of a natural gas company, whose rates it is empowered to fix, the "fair field price" or "fair market value, as a commodity, of the gas" which finds its way into the transmission lines for interstate transportation and sale.

This is precisely the argument which West Virginia, appearing as amicus curiae, advanced in the Hope Natural Gas Company Case, *supra*. We rejected the argument in that case. 320 US at pp. 607-615, particularly p. 614, note 25. We have reviewed it here at this length in view of the seriousness with which it has been urged not only by Canadian but also by the Independent Natural Gas Association of America which appeared amicus curiae. But we adhere to our decision in the Hope

Natural Gas Company Case and will briefly state our reasons.

A natural gas company as defined in § 2(6) of the act, 15 USCA § 717a(6), 4 FCA title 15, § 717a(6) is "a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale." Canadian is such a company. It is plain therefore that the Commission has authority to fix its interstate wholesale rates. Section 5. It is obvious that when rates of a utility are fixed the value of its property is affected. For as we stated in the Hope Natural Gas Company Case, value is "the end product of the process of rate making not the starting point." 320 US at p. 601. When a natural gas company which owns producing properties or a gathering system is restricted in its earnings by a rate order, the value of all of its property is affected. Congress of course might have provided that producing or gathering facilities be excluded from the rate base and that an allowance be made in operating expenses for the fair field price of the gas as a commodity. Some have thought that to be the wiser course. But we search the act in vain for any such mandate. The committee report stated that the act provided "for regulation along recognized and more or less standardized lines" and that there was "nothing novel in its provisions." H. Rep. No. 709, 75th Cong. 1st Sess. p. 3. Certainly the use of a rate base which reflects the property of the utility whose rates are being fixed has been customary. 2 Bonbright, Valuation of Property (1937) Chap XXX; Smith, The Control of Power Rates in the United States and England (1932);

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159 The Annals, 101. Prior to the act that method was employed in the fixing of the rates of gas, as well as electric, utilities. See *Willcox v. Consolidated Gas Co.* (1909) 212 US 19, 53 L ed 382, 29 S Ct 192, 48 LRA(NS) 1134, 15 Ann Cas 1034; *Cedar Rapids Gas Light Co. v. Cedar Rapids* (1912) 223 US 655, 56 L ed 594, 32 S Ct 389; *Newark Nat. Gas & Fuel Co. v. Newark* (1917) 242 US 405, 61 L ed 393, 37 S Ct 156, Ann Cas 1917B 1025; *California R. Commission v. Pacific Gas & E. Co.* (1938) 302 US 388, 82 L ed 319, 21 PUR(NS) 480, 58 S Ct 334; *Lone Star Gas Co. v. Texas* (1938) 304 US 224, 82 L ed 1304, 24 PUR(NS) 119, 58 S Ct 883. We do not say that the Commission lacks the authority to depart from the rate base method. We only hold that the Commission is not precluded from using it. There are ample indications throughout the act to support that view. Section 6(a), 15 USCA § 717e(a), 4 FCA title 15, § 717e(a) empowers the Commission to investigate and ascertain the "actual legitimate cost of the property of every natural-gas company, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property." As we have noted, § 9(a) gives the Commission authority not only to require natural gas companies to carry proper and adequate depreciation and amortization accounts but also to fix such rates for "the several classes of property of each natural-gas company used or useful in the production, transportation, or sale of natural gas." And § 14(b), as already stated, not only gives the Commission authority to de-

termine the adequacy or inadequacy of gas reserves of a natural-gas company but also empowers it to determine the "propriety and reasonableness of the inclusion in operating expenses, capital, or surplus of all delay rentals or other forms of rental or compensation for unoperated lands and leases." Section 9(a) and § 14(b), though designed not to limit the power of state regulatory agencies, plainly were designed to aid the Commission in its rate-making functions. These provisions¹⁰ all suggest that when Congress designed this act it was thinking in terms of the ingredients of a rate base, the deductions which might be made, and the additions which were contemplated. No exclusion of property used or useful in *production* of natural gas was made. That type of property was not singled out for special treatment; it was treated the same as all other property. We must read § 1(b) in the context of the whole act. It must be reconciled with the explicit provisions which describe the normal conventions of rate making.

That does not mean that the part of § 1(b) which provides that the act shall not apply "to the production or gathering of natural gas" is given no meaning. Certainly that provision precludes the Commission from any control over the activity of producing or gathering natural gas. For example, it makes plain that the Commission has no control over the drilling and spacing of wells and the like. It may put other limitations on the Commission. We only decide that it does not preclude the Commission from reflecting the production and gathering

¹⁰ Sections 5(b), 6(a), 9(a), 10(a), and 14(b).

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facilities of a natural gas company in the rate base and determining the expenses incident thereto for the purposes of determining the reasonableness of rates subject to its jurisdiction.

That treatment of producing properties and gathering facilities has of course an indirect effect on them. As we have said, rate making like other forms of price fixing may reduce the value of the property which is being regulated. Federal Power Commission v. Hope Nat. Gas Co. *supra*, (320 US at p. 601, 88 L ed at p. 344). But that would be true whether or not a rate base was used. Canadian would be the first to object if the gas which it owns was given no valuation in these proceedings. Obviously it has value. The act does not say that the Commission would have to value it at the fair field price if the Commission abandoned the rate-base method of regulation. We held in the Hope Natural Gas Company Case that under the act it is "the result reached not the method employed which is controlling. . . . It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the act is at an end." 320 US at p. 602, 51 PUR(NS) at p. 200. If the Commission followed Canadian's method, excluded the producing properties and gathering facilities from the rate base, valued the gas at a price which would reduce the earnings to the level of the present order, the effect on the producing properties and gathering facilities would be precisely the same as in the present case. Since there is no provision in the act which would require the Commission to value the gas at the price urged by

Canadian, the problem on review would be whether the end result was unjust and unreasonable. The point is that whatever method for rate making is taken the fixing of rates affects the value of the underlying property. Hence § 1(b) could be read as petitioners read it only if Congress had put a floor under producing properties and gathering facilities and fixed a minimum return on them.

These considerations lead us to conclude that § 1(b) does not prevent the Commission from taking into account the production properties and gathering facilities of natural gas companies when it fixes their rates.

[9] *Original Cost of Production and Gathering Facilities.* The Commission found the actual legitimate cost of Canadian's property, including its producing properties and gathering facilities, to be \$10,784,464 as of December 31, 1939. It deducted \$2,134,629 for accrued depreciation and depletion. It added \$150,738 for working capital and \$571,923 for gross plant additions to December 31, 1941. The result was a rate base of \$9,372,496 which the Commission rounded to \$9,375,000. The Commission rejected estimates of reproduction cost new less observed depreciation because they were "too conjectural to have probative value" and adopted original cost as "the best and only reliable evidence as to property values." 43 PUR(NS) at pp. 213, 214. Canadian maintains that if its leaseholds are to be included in the rate base, it was improper to value them as the Commission did. Canadian offered evidence that their present market value was much higher. It also offered evidence of a commodity market value of nat-

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atural gas per thousand cubic feet which would give a much higher value to the production phase of Canadian's business. We do not stop to develop the details of these lines of evidence. We cannot say that the Commission was under a duty to put the leaseholds into the rate base at the valuation urged by Canadian unless we revise what we said in *Federal Power Commission v. Natural Gas Pipeline Co.* (1942) 315 US 575, 586, 86 L ed 1037, 1049, 42 PUR(NS) 129, 62 S Ct 736, and overrule *Federal Power Commission v. Hope Nat. Gas Co.* (1944) 320 US 591, 88 L ed 333, 51 PUR(NS) 193, 64 S Ct 281. We held in those cases that the Commission was not bound to the use of any single formula in determining rates. And in the *Hope Natural Gas Company Case* we sustained a rate order based on actual legitimate cost against an insistent claim that the producing properties should be given a valuation which reflected the market price of the gas. In those cases we held that the question for the courts when a rate order is challenged is whether the order viewed in its entirety and measured by its end results meets the requirements of the act. That is not a standard so vague and devoid of meaning as to render judicial review a perfunctory process. It is a standard of finance resting on stubborn facts.¹¹ "From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. Cf. *Chicago & G. T. R. Co. v. Wellman* (1892) 143 US

339, 345, 346, 36 L ed 176, 179, 180, 12 S Ct 400. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital. See *Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission*, 262 US 276, 291, 67 L ed 981, 986, PUR 1923C 193, 43 S Ct 544, 31 ALR 807 (Mr. Justice Brandeis concurring)." *Federal Power Commission v. Hope Nat. Gas Co. supra* (320 US at p. 603, 51 PUR(NS) at p. 200).

Hence, we cannot say as a matter of law that the Commission erred in including the production properties in the rate base at actual legitimate cost. That could be determined only on consideration of the end result of the rate order, a question not here under the limited review granted the case.

[10] *Cost to Canadian's Affiliate.* As we have seen, Canadian and Colorado Interstate had their origin in an agreement made in 1927 between Southwestern, Standard, and Cities Service. Pursuant to that agreement Southwestern organized Canadian, a wholly owned subsidiary, to which were transferred the gas leaseholds and producing property owned by Amarillo, a wholly owned subsidiary of Southwestern. The cash consideration for this transfer was \$5,000,000 which was advanced by Standard at 6 per cent interest. Colorado Interstate was organized by Standard to construct and operate the pipe line to con-

¹¹ Cf. the British standards described in Smith, *The Control of Power Rates in the*

United States and England, 159 Annals, 101, 103, 104.

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nect with Canadian's facilities and to transport the gas to the Denver market and intermediate points.

Canadian issued \$11,000,000 of 6 per cent 20-year bonds to finance its portion of the total project. Colorado Interstate purchased those bonds with part of the proceeds of \$19,200,000 of its own 6 per cent 20-year sinking-fund bonds which Standard had purchased at par. Canadian repaid the \$5,000,000 advance made by Standard out of the proceeds of the sale of its bonds to Colorado Interstate. Canadian's stock was issued to Southwestern and is carried on Canadian's books at \$1. Canadian entered into a "cost" contract with Colorado Interstate whereby Canadian agreed to produce and sell gas to Colorado Interstate at "cost" for twenty years which might be extended by Colorado Interstate. Under the contract, "cost" included Canadian's operating expenses, interest at 6 per cent, and amortization (in lieu of depreciation, depletion, and retirements) of all of Canadian's indebtedness over the 20-year period. It was also provided that Canadian's "cost" under the contract should be decreased by any profits which it might obtain from other sources including any local sales. Thus it was obvious that Canadian under this "cost" contract would have no profits available for dividends on its stock.

But in accordance with the agreement Colorado Interstate issued \$2,000,000 par value 6 per cent preferred stock and 1,250,000 shares of no par common. Cities Service received 15 per cent of the common stock. The rest of the common stock and all of the preferred was divided equally between Southwestern and Standard. The lat-

ter paid \$2,000,000 in cash for its share of preferred and common. Southwestern received not only preferred and common stock, but also \$5,000,000 in cash from the proceeds of the \$11,000,000 of bonds which Canadian issued and which were to be amortized over twenty years as part of the "cost" of gas sold to Colorado Interstate by Canadian.

Canadian contends that the Commission should have included \$5,000,000 in the rate base for the gas leases and producing properties acquired from Amarillo. The original cost of the properties to Amarillo was \$1,879,504. That is all the Commission allowed. It said: "Any treatment which would permit the capitalization of such amounts would open the door to the renewal of past practices of the utility industry when properties were traded between affiliated interests at inflated prices with the expectation that the public would foot the bill." 43 PUR(NS) at p. 215. We agree. Southwestern owned the producing properties at the beginning of the transaction through one subsidiary; it owned them at the end of the transaction through another subsidiary. As between Southwestern and its subsidiaries there was no more than an intercompany profit. If Amarillo rather than Canadian had entered the project, had sold a bond issue to Southwestern and with part of the proceeds paid off a \$5,000,000 loan to Standard, certainly the amount of that payment would not be properly included in its rate base. We fail to see a difference in substance when another wholly owned subsidiary is utilized by Southwestern. The fact that the negotiations between Southwestern and

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Standard were at arm's length has no bearing on the present problem. The end result is that property has been transferred at a write-up from one of Southwestern's pockets to another. The impact on consumers of utility service of write-ups and inflation of capital assets through intercompany transactions or otherwise is obvious. The prevalence of the practice in the holding company field gave rise to an insistent demand for Federal regulation. See S. Doc. No. 92, Pt. 84-A, 70th Cong. 1st Sess., Utility Corporations, Final Report of the Federal Trade Commission (1936); Bonbright & Means, *The Holding Company* (1932), chap VI; Barnes, *The Economics of Public Utility Regulation* (1942) pp. 95 et seq.

American Teleph. & Teleg. Co. v. United States, 299 US 232, 81 L ed 142, 16 PUR(NS) 225, 57 S Ct 170, is not opposed to our position. It merely indicates a proper treatment for an intercompany transaction where in fact an additional investment is shown to exist.

Affirmed.

Mr. Justice Roberts and Mr. Justice Reed dissent from so much of the opinion as approves the allocation by the Commission of investments and expenses to the nonregulable transmission properties. They concur in the dissent of the Chief Justice in *Canadian River Gas Co. v. Federal Power Commission*.

Mr. Justice JACKSON, concurring: I concur in upholding orders of the Federal Power Commission in this and companion cases. The court cannot, consistently with *Federal Power Commission v. Hope Nat. Gas Co.* (1944)

320 US 591, 88 L ed 333, 51 PUR(NS) 193, 64 S Ct 281, do otherwise.

The opinion in the *Hope Natural Gas Company Case* laid down fundamental principles of decision in this language: "Under the statutory standard of 'just and reasonable' it is the result reached, not the method employed, which is controlling. . . . It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important." *Federal Power Commission v. Hope Nat. Gas Co. supra* (320 US at p. 602, 51 PUR(NS) at p. 200). This case introduced into judicial review of administrative action the philosophy that the end justifies the means. I had been taught to regard that as a questionable philosophy, so I dissented and still adhere to the dissent. But it is the law of this court, and I do not understand that any majority is ready to reconsider it.

It is true that the act excludes "production or gathering of natural gas" from jurisdiction of the Commission. If the Commission had imposed any direct regulation upon that activity, I would join in holding it to have exceeded its jurisdiction. But the orders in question have no immediate "impact" upon production or gathering of gas.

The statute commands the Commission to regulate the price of natural gas transported and sold at wholesale in interstate commerce for resale. The Commission has investigated the fiscal aspects of production and gathering

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because of their bearing on the reasonableness of interstate rates. I suppose a Commission is free to take evidence as to conditions and events quite beyond its regulatory jurisdiction where they are thought to affect the cost of that whose price it is directed to determine. This, as I see it, is all that has been done here.

Of course the Commission's order, whose primary impact is on rates in the interstate markets, has a very important secondary effect on production and on producers of gas. As the industry is organized the Commission could not fix an interstate price that would not have some such reaction. Indeed, I think the Commission cannot wisely fix a reasonable price without considering its incidental effect on production.

To let rate base figures, compiled on any of the conventional theories of rate making, govern a rate for natural gas seems to me little better than to draw figures out of a hat. These cases confirm and strengthen me in the view I stated in the Hope Natural Gas Company Case that the entire rate base method should be rejected in pricing natural gas, though it might be used to determine transportation costs. These cases vividly demonstrate the delirious results produced by the rate base method. These orders in some instances result in three different prices for gas from the same well. The regulated company is a part owner, and unregulated company is a part owner, and the landowner has a royalty share

of the production from certain wells. The regulated company buys all of the gas for its interstate business. It is allowed to pay as operating expenses an unregulated contract price for its co-owner's share and a different unregulated contract price for the royalty owner's share, but for its own share it is allowed substantially less than either. Any method of rate making by which an identical product from a single well, going to the same consumers, has three prices depending on who owns it does not make sense to me.

These cases furnish another example of the capricious results of the rate base method in this kind of case. The Commission has put five of the most important leaseholds, containing approximately 47,000 acres, in the rate base at \$4,244.24, something under 10 cents per acre. Three such leases are put in the rate base at zero. This is because original cost was used, and these were bought before discovery of gas thereon. The company which took the high risk of wildcat exploration is thus allowed a return of 6½ per cent on nothing for the three leases and a return of less than \$300 a year on the others. Their present market value is shown by testimony to be over \$3,000,000.

I cannot fairly say that the Commission exceeded its jurisdiction in obtaining this evidence and making these calculations, even though the evidence related to production and gathering of gas. But I do think it is a fantastic method of fixing a "just and reasonable" price for gas.¹ All of that,

¹ It does not help me to know what is a reasonable price for gas to learn what it does to outstanding securities. Many gas companies were organized and operated in care-free days when they issued stocks and bonds

without supervision. It does not prove that a gas rate is too low to show that it does not pay dividends on inflated values. Nor is a rate proved excessive by the fact that it pays a large dividend upon an exceedingly con-

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however, was thrashed out in the Hope Natural Gas Company Case.

I do not recede from the views therein stated that Hope provides no workable basis of judicial review, no key by which Commissions can anticipate what rule, if any, will control our review, and no guidance to counsel as to what issues they should try or how they should try them. I think, however, that the majority which promulgated that decision, or a majority of that majority, should be permitted to continue to spell out its application to specific problems until we see where it leads.

It is difficult for me in these cases, and in some it might be impossible, to follow the rule of Hope in reaching a decision. I have no intuitive knowledge as to whether a given price is reasonable, and my fundamental concept of reasonable price in this industry and how to find it has been rejected by the court. But it happens that this case illustrates some aspects of the problem of pricing gas, as will appear from the reasons I shall state for the failure of the company in this case to convince me that it is wronged by the reduction of prices ordered by the Commission.

Farsighted gas-rate regulation will concern itself with the present and future, rather than with the past, as the rate base formula does. It will take account of conditions and trends at the source of the supply being regulated. It will use price as a tool to bring goods to market—to obtain for the public service the needed amount of gas. Once a price is reached that will do that, there is no legal or economic reason to go higher; and any rate above

one that will perform this function is unwarranted. If the supply comes from a region where there is such overproduction that owners are ready to sell for less than a fair return on their investment, there is no reason why the public should pay more. On the other hand, if the supply is not too plentiful and the price is not a sufficient incentive to exploit it and fails to bring forth the quantity needed, the price is unwisely low, even if it does square perfectly with somebody's idea of return on a "rate base." The problem, of course, is to know what price level will be adequate to perform this economic function.

This case throws light on a subject which in Hope I was trying to discuss more abstractly. The evidence here shows facts from which we can learn, in the way any practical buyer would seek to learn, at which price this company is able, willing, and ready to bring gas into the interstate wholesale market. It is what might be called the most-favored-customer test, a test of course not available in a fully regulated industry but peculiarly adapted to the conditions of the natural gas industry as it has developed. This petitioner, Colorado Interstate Gas Company, sells to Colorado Fuel and Iron Company a large quantity of gas for industrial use. Its consumption approximates that of all the inhabitants of Denver. Colorado Fuel and Iron used in plants 7,257,379 thousand cubic feet, while Denver was supplied for public service 6,196,882 thousand cubic feet. The rates to the Fuel and Iron Company are not and never have been regulated by public authority. In

servative capitalization. I think Hope's use of return on stock or bond issues, repeated

in these cases, is one of the least reliable of possible tests of rates.

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May, 1938, the Gas Company contracted to extend the Fuel and Iron supply contract for five years at 9½ cents per thousand cubic feet for boiler fuel and 16 cents per thousand cubic feet for other purposes. The same gas is sold wholesale by the same company at the Denver city gate to the local distributing company at 40 cents per thousand cubic feet.

Of course differences in conditions of delivery must be allowed for. Gas from the field is transmitted roughly 200 miles from the field to Colorado Fuel and Iron and about another 100 miles to Denver. If 50 per cent more transportation added 50 per cent to the entire price of the Fuel and Iron Company gas, which would mean attributing a zero value to it in the field and its entire selling price to transportation, it would bring gas to the city gate of Denver at about 14 cents based on boiler gas and 24 cents based on other gas, instead of the 40 cents being charged.

Another difference must be allowed for. The Denver public service has priority over the industrial gas in time of shortage. This is an impressive legal advantage, but one whose real worth depends on the number and duration of interruptions it causes in actual practice. From the tabulation of reductions and suspensions of service the Fuel and Iron Company appears to have suffered 5 interruptions from 1932 to December 31, 1940—the shortest for fifteen hours, the longest for fifty hours. I do not belittle these interruptions—they may be very costly to an industrial customer—but nothing indicates that they account for any such difference in price as we have here.

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There is every indication that the Colorado Fuel and Iron price was really a bargained one. The gas company's position seems to have been the same as that stated by one of the witnesses in the Panhandle Case, "It may be heresy to say so but we try to charge our nonregulated customers all the traffic will bear." This may have been candor; it is not heresy. Such is the normal spirit of the market place. But the record shows that Colorado Fuel and Iron was not at the mercy of the gas company, was bargaining at arm's length, had a good bargaining position. It had been using other fuels and the gas company had to bid for its business as against fuel competition. Under this pressure the gas company was able, ready, and willing to part with its gas, delivered 200 miles from the field, at 9½ to 16 cents per thousand cubic feet.

What about the Denver rate? There the local distributing company, which was the purchaser, was a subsidiary of Cities Service, one of the three companies that owned the pipe line and gas supply and were the sellers of the gas. That local company had been distributing manufactured gas, by comparison with which 40-cent natural gas would look cheap, and is cheap. It is not necessary to draw any invidious inferences from intercorporate relationships to conclude that the 40-cent rate at the Denver gate was not a vigorously bargained one and was not much influenced by competitive considerations. The great economic advantages of natural gas to householders and the relative wastefulness of its industrial use are developed in my opinion in Hope.

I strongly suspect from the history

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of this transaction that there is an explanation of the difference in price—one which is not an uncommon argument used to justify a lower price to industrial than to household users. To supply Denver required laying a 20-inch pipe line, requires operating it, and requires most of the overhead of the business. To carry the additional fuel and iron business required only to lay the first 200 miles of pipe of 22-inch diameter instead of 20, and the additional revenue from industrial sales does not add the same proportion of capital investment, overhead, or operating expense. Thus, charging to Denver and other wholesale purchasers for resale to the public no more than would be charged if that service stood alone, the company may justify its industrial sales at low rates as good business from petitioner's management point of view.

But I do not think it can be accepted as a principle of public regulation that industrial gas may have a free ride because the pipe line and compressor have to operate anyway, any more than we can say that a big consumer should have a free ride for his coal because the trains run anyway. It is true that the Natural Gas Act forbids discrimination only as between regulated rates and does not forbid discriminations between the regulated and unregulated ones. 15 USCA § 717c (b), 4 FCA title 15, § 717c(b). But I do not think it precludes use of a voluntary, fairly bargained selling price as a standard of what is a "just and reasonable" price. By use of the unregulated price as a basis for comparison I think a reduction in the wholesale rates for resale to the public is in order. If this makes low price industrial busi-

ness less desirable, it will be in the long-range public interest for reasons more fully stated by me in *Hope*.

I should like to reverse this case, not because I think the rate reduction is wrong, but because I think the real inwardness of the gas business as affects the future has been obscured by the Commission's preoccupation with bookkeeping and historical matter. Such considerations may be relevant to rate base theories, but will not be very satisfying to a coming generation that will look back and judge our present regulatory method in the light of an exhausted and largely wasted gas supply. But as the matter stands I see no legal grounds for reversal.

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Mr. Chief Justice STONE, dissenting: Mr. Justice Roberts, Mr. Justice Reed, Mr. Justice Frankfurter, and I are of opinion that the Federal Power Commission, in making the rate order here under attack, exceeded its jurisdiction and reached a result which must be rejected because unauthorized by the applicable statute.

In fixing rates for petitioner's interstate business of transporting and selling natural gas for resale, the Commission included petitioner's gas wells and gas gathering facilities together with all its transportation and distribution facilities in a single rate base. It valued the wells and gathering facilities at their prudent investment cost of many years ago, a valuation drastically less than their present market value. It then restricted petitioner's return to $6\frac{1}{2}$ per cent of the rate base, including the wells and production facilities, constituting approximately two-thirds of the total rate base. It

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thus subjected petitioner's production and gathering property to the same regulation as that which the statute imposes upon petitioner's property used and useful in the interstate transportation and sale of gas for resale. This, we think, the Natural Gas Act in plain terms prohibits.

The Natural Gas Act of 1938, 52 Stat 821, Chap 556, 15 USCA §§ 717 et seq., 4 FCA title 15, §§ 717 et seq., as amended February 7, 1942, 56 Stat 83, Chap 49, declares, § 1(a): "the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and . . . Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest." In the execution of this policy §§ 4 and 5 of the act set up a complete scheme of regulation of rates and charges for the transportation and sale of natural gas by "natural gas companies" at wholesale in interstate commerce. Section 2(6) defines a natural gas company as "a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale." Section 1(b) provides: "The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale . . . , but shall not apply to any other transportation or sale of natural gas . . . or to the production or gathering of natural gas."

The court rejects petitioner's contentions that these provisions preclude the Commission from including the gas wells and gathering facilities in the

rate base for petitioner's regulated business; that regulation begins only with the delivery of gas into petitioner's transmission pipe line and includes, as the statute provides, only the interstate transportation and sale of the gas for resale. Petitioner insists that, since the wells and gathering facilities are not subject to Commission regulation, the cost or value of the gas upon its delivery to petitioner's transmission line must, for purposes of rate regulation of the regulated business of transportation and sale, be taken at its fair market value.

This issue is now for the first time presented to this court for decision. No such question was raised or decided in *Federal Power Commission v. Hope Nat. Gas Co.* (1944) 320 US 591, 610-614, 88 L ed 333, 349-351, 51 PUR(NS) 193, 64 S Ct 281. Although it was mentioned in the amicus brief of the state of West Virginia, which was not a party to the suit, no such issue was raised by the parties in the case. There the gas wells and gathering property were included in the rate base valued at its prudent investment cost, and the allowed return was restricted to 6½ per cent. But no objection was taken to the inclusion of the production property in the rate base, either in the circuit court of appeals or, so far as the record shows, in the application to the Commission for rehearing. Section 19(b) provides that no objection to the Commission's order may be considered by the court unless raised in the application to the Commission for rehearing. The production property having been included in the rate base without objection, we could consider only the question which was raised with respect to property ad-

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mitted to be properly a part of the rate base, namely, whether its valuation by the Commission and the allowed rate of return were within constitutional limits. Cf. *Cohen v. Virginia* (1821) 6 Wheat (US) 264, 399, 5 L ed 257, 290.

The act speaks in terms of activities which are regulated and those which are not. It subjects the interstate transportation and sale of natural gas, an activity, to the jurisdiction of the Commission, which includes the exercise of its rate-making function as prescribed by §§ 4 and 5, and which concededly extends to the valuation of property used in interstate transportation and sale of natural gas and to the determination of a fair rate of return upon that value.

Even though production and gathering could be thought to be a part of the regulated transportation and sale, that possibility is precluded by the words of § 1(b) which say: "The provisions of this act [including those of §§ 4 and 5 which prescribe rate making for the activity of transporting and selling wholesale] shall not apply" to another activity, "the production or gathering of natural gas."

It does not seem possible to say in plainer or more unmistakable language that the one activity, interstate transportation and sale, is to be subjected to, and that the other, production or gathering, is to be excluded from, the valuation and rate-making powers of

the Commission. To interpret the words "production or gathering" in § 1(b) in the only way which the court or the government is able to suggest, as referring only to the physical activities of drilling and spacing the gas wells, and thus excluding such activities alone from regulation, seems hardly plausible. It is true that "production or gathering" are activities which may include the drilling and spacing of gas wells. But the "transportation or sale" referred to in the phrase of § 1(b) "but shall not apply to any other transportation or sale of natural gas . . . or to the production or gathering of "natural gas," is also an activity. Yet the court and the government concede that by the command of the act that it "shall not apply" to the activity of "any other transportation or sale," petitioner's property used in the transportation and sale of gas to industrial consumers is excluded from the rate base. They thus reach the surprising conclusion that property used in one sort of activity to which the provisions of the act are declared not to apply, may nevertheless be included in the rate base, while holding that another sort of property, also used in an activity to which the provisions of the act are by the same phrase declared not to apply, is nevertheless excluded from the rate base.

Nor is the plausibility of the government's construction aided by reference to the provisions of the act¹ giving

¹ Section 5(b) authorizes investigation by the Commission of the cost of production of natural gas, where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas. Section 6(a) empowers the Commission to ascertain the cost of the property of every natural gas company and other facts bearing on the determination of such cost "when found necessary for rate-making

purposes." Section 9(a) authorizes the Commission to determine the proper "rates of depreciation and amortization" of the several classes of property of each natural gas company "used or useful in the production, transportation, or sale of natural gas." Section 10 (a) gives the Commission authority to require reports from natural gas companies of their "cost of maintenance and operation of facilities for the production" of natural gas. Sec-

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ing the Commission power to make investigations, to regulate accounts, to gather information and to find values of property of natural gas companies and their depreciation. These provisions are obviously directed at aiding the Commission in the exercise of various powers which are conferred upon it but which are unrelated to the regulation of the production or gathering of natural gas. Section 5(b), for example, authorizes the Commission to procure the information of costs of production or transportation of natural gas in aid of state Commissions, and such was its purpose. H.Rep No. 709, p 5, 75th Cong 1st Sess on HR 6586. Sections 9(a) and 10(a) give authority essential to the Commission's admitted power to regulate the interstate sale of gas at wholesale, to determine whether the cost of or charge for the gas acquired by a natural gas company, whose rates are regulated, are excessive because unrelated to fair or market value, especially where the relations between the producer and the interstate wholesale distributor are not at arm's length. *United Fuel Gas Co. v. Kentucky R. Commission*, 278 US 300, 320, 73 L ed 390, 401, PUR1929A 433, 49 S Ct 150; *Smith v. Illinois Bell Teleph. Co.* 282 US 133, 144, 75 L ed 255, 260, PUR1931A 1, 51 S Ct 65; *Western Distributing Co. v. Public Service Commission*, 285 US 119, 76 L ed 655, PUR1932B 236, 52 S Ct 283; *Dayton Power & Light Co. v. Public Utilities Commission* (1934) 292 US 290, 78 L ed 1267, 3 PUR (NS) 279, 54 S Ct 647; *Natural Gas Pipeline Co. v. Slattery* (1937) 302 US 300, 306-308, 82 L ed 276, 279,

tion 14(b) gives the Commission power to determine the "adequacy or inadequacy of the gas reserves held or controlled" by them.

58 PUR(NS)

280, 21 PUR(NS) 255, 58 S Ct 199; *Arkansas Louisiana Gas Co. v. Department of Public Utilities* (1938) 304 US 61, 82 L ed 1149, 23 PUR (NS) 337, 58 S Ct 770; Cf. *Interstate Commerce Commission v. Goodrich Transit Co.* (1912) 224 US 194, 211, 56 L ed 729, 736, 32 S Ct 436. And the determination of the Commission permitted by § 14(a) with respect to the amount of gas reserve is essential to the determination of the rate of depreciation and amortization of the gas company's regulated transmission line, since its useful life is normally limited by the available gas supply.

No reason, founded upon the language of the statute or its purpose, is advanced for disregarding the plain command of § 1(b) excluding the production or gathering of the gas from those other activities, the transporting and selling, which are subject to the regulatory provisions of §§ 4 and 5. The language was well chosen to accomplish exactly what the legislative history shows was intended to be accomplished. The report of the House Committee (H. Rep. No. 709, 75th Cong. 1st Sess.), recommending adoption of the bill which became the Natural Gas Act, shows beyond doubt that the purpose of the legislation was to bring under Federal regulatory control the interstate transportation and sale of natural gas which had been held not to be subject to state regulation, in *Missouri ex rel. Barrett v. Kansas Nat. Gas Co.* 265 US 298, 68 L ed 1027, PUR1924E 78, 44 S Ct 544; Cf. *Rhode Island Pub. Utilities Commission v. Attleboro Steam & Electric Co.* 273 US 83, 71 L ed 549, PUR 1927B 348, 47 S Ct 294, but to leave undisturbed all other matters which

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were then subject to state regulation, which included rate making for production and gathering. See *Illinois Nat. Gas Co. v. Central Illinois Pub. Service Co.* (1942) 314 US 498, 506, 86 L ed 371, 376, 42 PUR(NS) 53, 62 S Ct 384; *Federal Power Commission v. Hope Nat. Gas Co.* *supra* (320 US at p. 609, 88 L ed at p. 348). And upon the floor of the Senate the sponsor of the bill declared: "It does not attempt to regulate the production of natural gas or the distributors of natural gas; only those who sell it wholesale in interstate commerce." 81 Cong Rec p. 9312. That the exemption of the production of natural gas from regulation was thought by the regulatory authorities themselves to exclude regulation, by the Commission, of the price of gas in the producing field, appears from the hearings upon the predecessor bill,² which contained provisions identical with or substantially equivalent to §§ 5(b), 6(a), 9(a), and 10(a) of the act as finally passed, and § 1(b) of which declared that the provisions of the bill should not apply "to the production of natural gas."

The exclusion of production and gathering of natural gas from the regulatory authority of the Commission is a command to the Commission not to regulate that which is excluded. Otherwise powers reserved to the states would be encroached upon con-

trary to the words and purpose of the act, and a pretended government would be set up by Commission action, without the authority of Congress.

The Commission did not deny the command, but justified disregard of it only by saying that: "Canadian's production and gathering operations are an integral part of its total operations, including transportation in interstate commerce and the sale of natural gas for resale in interstate commerce." And it added: "The investigation of Canadian's production and gathering property and operations is indispensable in regulating Canadian's rates and charges for the sale of natural gas in interstate commerce for resale." (43 PUR(NS) at p. 213). Such an investigation was undoubtedly proper and necessary in order to ascertain the fair unregulated value of the natural gas produced in an unregulated field, on its delivery into petitioner's transmission pipe line, in order to enable the Commission to regulate appropriately the sales price of the gas.

But this does not mean that in fixing rates for a regulated business which derives its distributed product from an unregulated business that the property of the latter is not to be segregated from the regulated property, or that there can rightly be applied to it standards of valuation and rate of return which are applicable only to a

² In the hearings upon the earlier bill, Mr. DeVane, Solicitor of the Federal Power Commission, stated: "§ 1(b) also provides that the Commission shall have no jurisdiction over the gathering or gathering rates for natural gas." "Gathering rates," he explained as "The rates that are paid in the gathering field." He further stated, "There is no control of the gathering rate; the Commission would not have jurisdiction. That price is fixed by competitive conditions that exist in the field." He said that the Commission does not have any

power over the price "that is paid to the gatherer, the man that produces it; that is binding if the transaction is at arm's length. If the transaction is not at arm's length, of course, its reasonableness may be inquired into, under the decisions of the Supreme Court." There is nothing in the subsequent legislative history to indicate that this understanding with respect to § 1(b) in the earlier act was changed at a later stage, and § 1(b) as finally adopted indicates no such change. Hearings on HR 11662, 74th Cong 2d Sess pp 28, 42, 43.

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regulated business. *Interstate Commerce Commission v. Goodrich Transit Co.* *supra* (224 US at p. 211, 56 L ed at p. 736); *Smith v. Illinois Bell Teleph. Co.* *supra* (282 US at p. 151, 75 L ed at p. 264); *Western Distributing Co. v. Public Service Commission*, *supra* (285 US at pp. 123, 124, 76 L ed at pp. 657, 658). Otherwise its exclusion from regulation would be meaningless. The standards to be applied in order to make certain that the regulated business is not paying too much for the product are those which currently apply in the unregulated business. This, as we have pointed out, was recognized by the solicitor of the Commission in the hearings on proposed legislation culminating in the present act. He said that the unregulated field price was controlling upon the Commission "if the transaction is at arm's length. If the transaction is not at arm's length, of course, its reasonableness may be inquired into, under the decisions of the Supreme Court."⁸

It is one thing to say that such investigation is necessary to ascertain the fair unregulated value of petitioner's gas when produced. But it is quite another to say, and the Commission did not say, that it is necessary or permissible for the Commission to fix the value of petitioner's production property and the gas which it produces far below their market value, and to restrict petitioner's return from its unregulated business below that which would be produced if the gas production were unregulated. Such restrictions can be justified only by authorized rate regulation. From such regulation petitioner's gas wells and pro-

duction facilities have been specifically exempted by command of the statute.

Where a regulated utility procures from an unregulated source the product which it distributes, the proper cost which the regulated company should be allowed to pay for it, when the Commission is not authorized to regulate the production, presents a problem not free from difficulties. But here the Commission has made no effort to meet these difficulties, if such there be, except by the one course which the statute forbids, by subjecting the production property to regulation.

A familiar and permissible way of meeting them, as petitioner points out, is by treating the property unregulable in law as unregulable in fact, and applying to it those standards of value and return which currently prevail in an unregulated business when it is conducted at arm's length. Petitioner urges that there are other courses open to the Commission which will not violate the statute, and that there is uncontradicted evidence in the record showing that natural gas has a market value at the well head and at the point of delivery into petitioner's transmission line. Those conditions would indicate that gas production property in the area in question has an ascertainable market value on which, in the absence of regulation, petitioner is free to receive the return currently produced by such property.

Without an appropriate investigation we cannot know the fact, which is for the Commission and not for us to determine. If investigation discloses difficulties which only legislation can cope with, the answer is further legislation, not disregard of existing legis-

⁸ See footnote 2, *supra*.

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ation. But the Commission has made no such determination or investigation and, so far as appears, has given no consideration to the evidence supporting petitioner's contentions. It is the duty of the Commission so to conduct its proceedings as to restrict its action within the jurisdiction conferred upon it. It is plain that it has not performed that duty here, and that it should be required to do so. Whether the facilities for the production of natural gas should be regulated and, if so, whether the regulation should be left to the states, as we think Congress has left it, are matters for Congress to determine. If it be thought that petitioner's profits from production of gas are too great because they are unregulated, and if it be thought to be important that they be reduced, it is immensely more important that that be not accomplished by lawless action.

It is no answer to cite our authorities involving state regulation,⁴ in order to prove that the Commission here has acted within its statutory authority. In reviewing such cases we accept the state's construction of its statutes fixing the jurisdiction of state regulatory bodies. Nor is it any justification of the Commission's action to say, applying the Hope Natural Gas Company Case, that the end result of the Commission's action is that petitioner's unregulated property is not being confiscated. Authorized utility regulation may, of course, re-

sult in a permissible diminution of property values and income, provided the regulation does not so exceed constitutional limitations as to be "confiscatory." Hence, loss or damage caused by authorized utility regulation gives rise to no actionable wrong if the regulation is within constitutional limitations. Such was the principle laid down in the Hope Natural Gas Company Case.

But any such diminution in value or return, caused by unauthorized regulation, is unlawful without reference to constitutional principles. In the Hope Natural Gas Company Case there was no contention that the utility's production property was not subject to regulation. The only question was whether the return upon it, as allowed by statutory authority, was confiscatory because it went beyond the constitutional limits of the power to regulate. Here the question is only of the deprivation of petitioner's property by the Commission's action in excess of its statutory power to regulate. That power, in the case of petitioner's production property, we think does not exist. So far as the unauthorized regulation deprives petitioner of its property, the deprivation cannot be justified by saying that, if authorized, it would not violate the Constitution. Absence of confiscation by authorized Commission regulation does not prove that the Commission has legislative authority to regulate.

⁴Willcox v. Consolidated Gas Co. (1909) 212 US 19, 53 L ed 382, 29 S Ct 192, 48 LRA(NS) 1134, 15 Ann Cas 1034; Cedar Rapids Gas Light Co. v. Cedar Rapids. (1912) 223 US 655, 56 L ed 594, 32 S Ct 389; Newark Nat. Gas & Fuel Co. v. Newark (1917) 242 US 405, 61 L ed 393, 37 S Ct 156, Ann Cas 1917B 1025; Public Utilities Commission v. Landon, 249 US 236, 63 L ed

577, PUR1919C 834, 39 S Ct 268; Pennsylvania Gas Co. v. Public Service Commission, 252 US 23, 64 L ed 434, PUR1920E 18, 40 S Ct 279; California R. Commission v. Pacific Gas & E. Co. (1938) 302 US 388, 82 L ed 319, 21 PUR(NS) 480, 58 S Ct 334; Lone Star Gas Co. v. Texas (1938) 304 US 224, 82 L ed 1304, 24 PUR(NS) 119, 58 S Ct 883.

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Colorado-Wyoming Gas Company
v.
Federal Power Commission et al.

No. 575

323 US —, 89 L ed —, 65 S Ct 850

April 2, 1945

CERTIORARI to Circuit Court of Appeals for Tenth Circuit to review judgment affirming rate order of Federal Power Commission; affirmed in part, reversed in part, and remanded. For decision of court below, see (1944) 54 PUR(NS) 1, 142 F (2d) 943, which affirmed (1942) 43 PUR(NS) 205.

Rates, § 13 — Jurisdiction of Federal Power Commission — Intrastate sales of natural gas.

1. Sales of natural gas at wholesale made intrastate to distributors are subject to the rate-making powers of the Federal Power Commission when the wholesale company obtains practically its entire supply from an interstate pipe line of a gas transmission company, p. 95.

Interstate commerce, § 23 — What constitutes — Sales of interstate gas at wholesale.

2. Interstate commerce in natural gas brought into the state and sold to a wholesale company for resale to distributing companies does not end until the gas enters the service pipes of the distributing companies, p. 95.

Rates, § 146 — Cost of service factor — Decrease in supply cost — Natural gas.

3. An order reducing rates of a natural gas company is valid to the extent that it reflects a reduction in rates of an interstate pipe-line company from which the company obtains practically all of its gas, p. 98.

Appeal and review, § 62 — Grounds for remand — Incomplete findings.

4. A rate reduction order of the Federal Power Commission should be set aside and remanded for further proceedings when based upon findings lacking the clarity and completeness necessary in order that the court may give the findings conclusive weight, p. 98.

APPEARANCES: Donald C. McCreery, of Denver, Colorado, argued the cause for petitioner; Charles V. Shannon, of Washington, D. C., argued the cause for respondents.

Mr. Justice DOUGLAS delivered the
58 PUR(NS)

opinion of the court: This case is a companion case to Colorado Interstate Gas Co. v. Federal Power Commission, No. 379, and Canadian River Gas Co. v. Federal Power Commission, No. 380, decided this day [323

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US —, 89 L ed —, 58 PUR(NS) 000 in excess of costs and a fair re-
ontie, p. 65, 65 S Ct 829]. Petitioner turn and that \$119,000 of that excess
 began operations in 1925. Until 1929 were allocable to petitioner's sales for
 petitioner obtained its entire supply resale. The Commission ordered peti-
 from the Wellington Field of the Con- tioner to reduce its wholesale rates by
 tinental Oil Co., near Ft. Collins, \$119,000 a year (1942) (43 PUR
 Colorado. Its transmission line ran (NS) 205, 234). That does not rep-
 from that point north to Cheyenne, resent the net decrease in revenue,
 Wyoming. The Wellington Field be- since the Commission ordered Colo-
 gan to diminish. So petitioner, in rado Interstate to reduce its rates to
 October, 1929, entered into a 20-year petitioner by \$98,000 a year. Accord-
 contract with Colorado Interstate to ingly, the net decrease in revenues of
 purchase gas from it, the gas to be petitioner will be \$21,000 if the Com-
 delivered to petitioner at its metering mission's order stands. The petition
 station near Littleton, Colorado. Ac- for certiorari which we granted to re-
 cordingly, in 1929 and 1930 petiti- view the judgment of the circuit court
 oner constructed a pipe line between of appeals affirming the order of the
 Ft. Collins, Colorado and Littleton, Commission (1944) (54 PUR(NS)
 Colorado, where connection was made 1, 142 F(2d) 943), was limited to the
 with Colorado Interstate's transmis- question whether the allocation of cost
 sion system. Between 1929 and 1939 of service used by the Commission is
 branch lines were constructed to serve without support in the record and con-
 various cities, towns, and industrial trary to law.
 customers in Colorado. At the pres- [1, 2] The Commission in this case
 ent time all but 2 per cent of its gas as in Colorado Interstate Gas Co. v.
 is obtained from Colorado Interstate. Federal Power Commission and Cana-
 Petitioner sells gas at the Cheyenne dian River Gas Co. v. Federal Power
 city gate to its affiliate Cheyenne Commission, *supra*, did not make a
 Light, Fuel and Power Co. It also sells separation of properties used in the
 directly to industrial consumers in regulated business from those used in
 Colorado and to some extent in Wyom- the unregulated. It used instead the
 ing. And it sells gas at various city same method of allocation of costs as
 gates in Colorado for resale. it did in those other cases. Petition-
 er contends that the Commission's
 method of allocation of costs included
 in the regulated business a part of its
 business which Congress has not sub-
 jected to regulation by the Commis-
 sion. As we have noted, petitioner's
 transmission line commences in Colo-
 rado near Littleton where it connects
 with the pipe line of Colorado Inter-
 state. Petitioner sells some of its gas
 in Colorado for resale to domestic users
 in certain towns in Colorado. The

The investigation and hearings on the interstate wholesale rates of Cana-
 dian, Colorado Interstate and peti-
 tioner were consolidated. As we have
 seen the Commission ordered Cana-
 dian to reduce its rates by \$561,000
 per year. That amount made up part
 of the \$2,065,000 annual reduction
 which the Commission ordered in the
 rates of Colorado Interstate. In the
 present case the Commission found
 that petitioner's revenues were \$159,-

000 in excess of costs and a fair re-
 turn and that \$119,000 of that excess
 were allocable to petitioner's sales for
 resale. The Commission ordered peti-
 tioner to reduce its wholesale rates by
 \$119,000 a year (1942) (43 PUR
 (NS) 205, 234). That does not rep-
 resent the net decrease in revenue,
 since the Commission ordered Colo-
 rado Interstate to reduce its rates to
 petitioner by \$98,000 a year. Accord-
 ingly, the net decrease in revenues of
 petitioner will be \$21,000 if the Com-
 mission's order stands. The petition
 for certiorari which we granted to re-
 view the judgment of the circuit court
 of appeals affirming the order of the
 Commission (1944) (54 PUR(NS)
 1, 142 F(2d) 943), was limited to the
 question whether the allocation of cost
 of service used by the Commission is
 without support in the record and con-
 trary to law.

[1, 2] The Commission in this case
 as in Colorado Interstate Gas Co. v.
 Federal Power Commission and Cana-
 dian River Gas Co. v. Federal Power
 Commission, *supra*, did not make a
 separation of properties used in the
 regulated business from those used in
 the unregulated. It used instead the
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 it did in those other cases. Petition-
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 transmission line commences in Colo-
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 with the pipe line of Colorado Inter-
 state. Petitioner sells some of its gas
 in Colorado for resale to domestic users
 in certain towns in Colorado. The

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Commission held that those wholesale sales were subject to its jurisdiction. Petitioner contends that those sales are made in intrastate commerce and are not subject to the Commission's rate-making powers. Its position is that the one and only sale for resale by it in interstate commerce is the sale at the city gate in Cheyenne, since none of the Colorado sales involve interstate commerce so far as petitioner is concerned.

The answer turns on the meaning of § 1(b) of the act (52 Stat 821, 15 USCA § 717(b), 4 FCA title 15, § 717(b)) which provides:

"(b) The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

The Commission relied on *Illinois Nat. Gas Co. v. Central Illinois Pub. Service Co.* (1942) 314 US 498, 86 L ed 371, 42 PUR(NS) 53, 62 S Ct 384, in concluding that it had jurisdiction over the wholesale sales in

Colorado. That case presented the question whether the Illinois Commission or the Federal Power Commission had authority to authorize a pipe-line extension wholly within Illinois. The company proposing the extension (Illinois Gas Co.) owned a pipe-line system wholly in Illinois which was connected at various points in that state with the pipe line of its parent company, Panhandle Eastern Pipe Line Co., which owned and operated a natural gas pipe line system from gas fields in Texas, Kansas and Oklahoma across Illinois and into Indiana. The Illinois company purchased its gas under a long term contract from Panhandle Eastern and transported it through its own lines to local gas distributing utilities in Illinois to which it sold the gas for distribution to consumers in various Illinois cities. We held that the Illinois company by virtue of § 7(c) of the act, 15 USCA § 717f(c), 4 FCA title 15, § 717f(c) could build an extension to connect with the facilities of a company distributing gas to consumers in Illinois only after obtaining a certificate of public convenience and necessity from the Federal Power Commission. We held that the Illinois company and Panhandle Eastern were engaged "in interstate commerce in the purchase and sale of the natural gas which moves in a continuous stream from points without the state" into the

¹ Section 7(c) provides in part: "No natural-gas company shall undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural gas company, or acquire or operate any such facilities or extensions thereof, or engage in transportation by means of any new or additional facilities, or sell natural gas in any such market, unless and until there shall first have

been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such new construction or operation of any such facilities or extensions thereof:

A natural gas company is defined in § 2(6) 15 USCA § 717a(6), 4 FCA title 15, § 717a(6) as a "person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale."

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pipes of the Illinois company; and that "the particular point at which the title and custody of the gas pass to the purchaser, without arresting its movement to the intended destination, does not affect the essential interstate nature of the business." 314 US at pp. 503, 504, 42 PUR(NS) at pp. 55, 56. We pointed out that the purpose of the act was to provide "an agency for regulating the wholesale distribution to public service companies of natural gas moving interstate, which this Court had declared to be interstate commerce not subject to certain types of state regulation." *Id.*, p. 506. We reviewed the earlier decisions of the Court which adopted the mechanical test for determining when interstate commerce ends and intrastate commerce begins, viz., when the gas is introduced into the service pipes of the local distributor. We noted that it was to fit the pattern of state regulation reflected in those decisions that the Natural Gas Act was passed.

Accordingly, we conclude that if petitioner's pipe line were to be constructed today from Littleton, Colorado to the city gates of the Colorado towns where petitioner's gas is resold, § 7(c) would require that a certificate of public convenience and necessity be obtained from the Commission. For in this case as in *Illinois Nat. Gas Co. v. Central Illinois Pub. Service Co.* *supra*, the gas which petitioner purchases from Colorado Interstate moves in a continuous stream across state lines to local distributing companies in Colorado as well as Wyoming. If petitioner is engaged in "the transportation of natural gas in interstate commerce" to those Colorado towns within the meaning of § 1

(b), its wholesale sales in Colorado are also sales "in interstate commerce of natural gas for resale for ultimate public consumption" as those words are used in § 1(b). That commerce does not end until the gas enters the service pipes of the distributing companies.

Most of the other objections which petitioner raises to the Commission's method of allocation of costs have been considered in the cases of *Colorado Interstate Gas Co. v. Federal Power Commission* and *Canadian River Gas Co. v. Federal Power Commission*, *supra*. We need not repeat what we said there. But there are a few distinct phases of this case which must be separately stated.

Petitioner says that the Commission treated it along with Canadian and Colorado Interstate as an integrated unit for purposes of the allocation of costs. The inference is that the Commission combined petitioner's costs with those of the other two companies and allocated the combined costs three ways. That is not the fact. Petitioner is independent in management and control from the other two. Its system was not constructed as part of Canadian's and Colorado Interstate's system but was started independently and connected with the others at a later stage. The Commission recognized that in operation the three company project was a single one in the sense that an alteration in Canadian's rates affected the reasonableness of the rates of Colorado Interstate and in turn the reasonableness of the rates of petitioner. But when it came to an allocation of costs among petitioner's classes of

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business the Commission considered petitioner's costs alone.

[3, 4] Here as in the cases of Canadian and Colorado Interstate the findings of the Commission leave much to be desired. The findings are general and incorporate by reference the staff exhibits, on which reliance is put for the subsidiary findings. But in this case there are added difficulties. The staff used one system, the Commission another. As the Commission said the staff "departed from the use of the system peak day for allocating demand (fixed) costs and combined the separate class peaks of resale customers and of main line industrial customers." 43 PUR(NS) at p. 233. The Commission thought a different method would be in keeping with petitioner's operations. It said: "The Colorado Portland Cement Company, the principal main line industrial user, is curtailed regularly during system peak days. Its demand on the system peak day is, in our opinion, a proper measure of its proportionate share of demand costs than its highest off-peak demand. Accordingly, the principles and methods of cost allocation presented by Commission staff are adopted with the modification that the coincident demands of all customers on the system peak day are used, and with exception of deliveries to Highway Gas Company." 43 PUR(NS) at p. 234. When we read that finding against the record there are ambiguities which we are unable to resolve were it our province to do so.

(1) The "system peak day" is February 9, 1939—the same day chosen for Canadian and Colorado Interstate. We know from our search of the record that is not the actual peak

day in 1939 for petitioner's business. We are told by the Commission in its brief that it is the ratio of deliveries to the regulable and non-regulable customers rather than total deliveries that determines the allocation of capacity costs. But there are no findings which indicate why the system peak day for other companies should be taken as the system peak day for this company. Nor are there any findings which indicate that the ratio on the system peak day is a more reliable guide in the allocation of costs than the ratio on the actual peak day of this company.

(2) The Commission says it allocated capacity costs on the basis of the "coincident demands of all customers on the system peak day." It said that Colorado Portland Cement Co. is "curtailed regularly during system peak days" and that its "demand" on that day is the proper measure of its proportionate share of capacity costs. We assume it meant by "coincident demands" on the system peak day, the amount of gas actually delivered on that day, not the customers' respective needs for gas on that day. But when we turn to the record there are ambiguities. The staff exhibit on which the Commission apparently relied designates as one classification the "maximum day deliveries on Colorado Interstate Gas Co. peak day—Thurs., Feb. 9, 1939." Under that heading we compute 1,777 thousand cubic feet to direct-sale customers and 9,009 thousand cubic feet to resale customers on February 9, 1939. The Commission in its brief tells us that that was the basis on which it allocated capacity costs, viz. 83.5 per cent to the resale gas, 16.5 per cent to the di-

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rect sale gas. But there is evidence in the record that the direct-sale customers received on February 9, 1939 not 1,777 thousand cubic feet but only 522 thousand cubic feet. If we use 522 thousand cubic feet rather than 1,777 thousand cubic feet in our computations we shift to the interstate wholesale sales almost \$21,000 additional costs. Now the net rate decrease ordered by the Commission in this case amounted to \$21,000. Hence that net decrease substantially disappears if we take 522 thousand cubic feet rather than 1,777 thousand cubic feet as the amount of direct sales on February 9, 1939. The choice of the lower figure would thus be fatal to the Commission's case.

We do not know why the lower figure was rejected. There are no findings to guide us. In the record there is testimony which may suffice as a partial reconciliation of the difference and which casts some doubts on the accuracy of the lower figure. But we have been unable completely to reconcile the difference. We do know from a reading of the record that the staff exhibit from which the 1,777 thousand cubic feet item was obtained was based at least in part on averages or estimates not on actual deliveries. It is not clear whether 1,777 thousand cubic feet rested on estimates or reflected actual deliveries by petitioner on February 9, 1939. The caption "maximum day deliveries on Colorado Interstate Gas Co. peak day—Thurs., Feb. 9, 1939" is ambiguous. It may mean that the gas delivered to petitioner by Colorado Interstate on that day was apportioned among the several classes of customers according to their actual use on that

day. It may mean actual deliveries by petitioner during that day. The figures may or may not be the same.

The review which Congress has provided for these rate orders is limited. Section 19(b) 15 USCA § 717r(b), 4 FCA title 15, § 717r(b) says that the "finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive." But we must first know what the "finding" is before we can give it that conclusive weight. We have repeatedly emphasized the need for clarity and completeness in the basic or essential findings on which administrative orders rest. *Florida v. United States* (1931) 282 US 194, 215, 75 L ed 291, 304, 51 S Ct 119; *United States v. Baltimore & O. R. Co.* (1935) 293 US 454, 464, 79 L ed 587, 594, 55 S Ct 268; *United States v. Chicago, M. St. P. & P. R. Co.* (1935) 294 US 499, 504, 505, 510, 511, 79 L ed 1023, 1028, 1029, 1031, 1032, 55 S Ct 462; *United States v. Carolina Freight Carriers Corp.* (1942) 315 US 475, 488, 489, 86 L ed 971, 982, 43 PUR (NS) 423, 62 S Ct 722. Their absence can only clog the administrative function and add to the delays in rate making. We cannot dispense with them for Congress has provided the standards for judicial review under this act. Section 19(b). The courts cannot perform the function which Congress assigned to them in absence of adequate findings. Nor are they authorized under § 19(b) to make findings and substitute them for those of the Commission.

We think it is plain that \$98,000 of the rate decrease ordered by the Commission in this case is valid since it reflects the reduction in the rates

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of Colorado Interstate from whom petitioner purchases practically all of its gas. But the balance of the \$119,000 rate decrease which was ordered, viz. \$21,000, is so shrouded in doubt that further findings by the Commission are necessary.

Accordingly, we affirm the judgment below insofar as it sustained the order of the Commission directing petitioner to reduce its rates by \$98,000. As to the balance of the rate reduction, we reverse the judgment below, set aside the order of the Commission, and remand the cause for

further proceedings in conformity with this opinion. See § 19(b).

It is so ordered.

The Chief Justice, Mr. Justice Roberts, Mr. Justice Reed, and Mr. Justice Frankfurter are of the opinion that the case should be remanded to the Commission for separate allocation of investment and operating cost between the regulable and nonregulable properties, as well as for the clarification of findings directed in the opinion. They agree that the deliveries to wholesalers in Colorado are in interstate commerce.

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Panhandle Eastern Pipe Line
Company et al.

v.

Federal Power Commission et al.

No. 296

323 US —, 89 L ed —, 65 S Ct 821

April 2, 1945

CERTIORARI to Circuit Court of Appeals for the Eighth Circuit to review judgment affirming order of Federal Power Commission fixing natural gas rate; affirmed. For decision by Circuit Court, see (1944) 54 PUR(NS) 26, 143 F(2d) 488, which affirmed Commission decision in (1942) 45 PUR(NS) 203.

Appeal and review, § 13 — Proper court — Question of jurisdiction or venue.

1. An objection that a circuit court of appeals did not have jurisdiction under § 19 of the Natural Gas Act, 15 USCA § 717r, to review an order of the Federal Power Commission, based on the ground that the company seeking review did not have its principal place of business in that circuit, goes to venue not to jurisdiction, since § 19(b) invests all intermediate Federal courts with the power to review orders of the Commission, subject to the provision that parties may object that a particular circuit lacks the specified qualifications, p. 102.

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Procedure, § 9 — Venue — Waiver of objection.

2. The right to have a case heard in the court of proper venue may be lost unless seasonably asserted, and it may be waived by any party, p. 102.

Appeal and review, § 18 — Scope of review — Objection not seasonably raised — Venue.

3. An objection that review of an order of the Federal Power Commission was not sought in the proper circuit court of appeals, when made after judgment had been rendered, came too late and the Supreme Court need not decide whether the suit was brought in the proper circuit, p. 102.

Rates, § 199 — Unit for rate making — Regulated and unregulated business — Natural gas company.

4. Failure of the Federal Power Commission, in fixing interstate wholesale rates, to make a formal allocation of cost or property between regulated and unregulated business of a natural gas company whose activities embrace both wholesale service and direct industrial sales, is not error when the Commission allocates to interstate wholesale business all earnings from the entire business in excess of a 6½ per cent return, where all parties agree that such property and cost allocation would be impractical, that some division of the apparent profit from direct industrial business had to be made, and that a fair division is a matter of judgment not mathematics and where the company treats its entire business as a unit, fails to keep accounts which reflect a segregation of properties and costs, and fails to insist on a segregation of property in its petition for rehearing, p. 104.

Rates, § 13 — Jurisdiction of Federal Power Commission — Consideration of unregulated rates — Natural gas.

5. The Federal Power Commission, while it lacks authority to fix rates for direct industrial sales of natural gas, may take those rates into consideration when it fixes rates for interstate wholesale sales subject to its jurisdiction, in view of the provisions of § 5(a) of the Natural Gas Act, 15 USCA § 717d (a), p. 104.

Appeal and review, § 18 — Scope of review — Questions not raised below — Apportionment.

6. The failure of a natural gas company to request the Federal Power Commission to make a segregation of properties used in its regulated business and its unregulated business for the purpose of fixing rates for interstate wholesale service precludes an attack in the courts on the Commission's order for failure to make such segregation, p. 104.

Rates, § 13 — Jurisdiction of Federal Power Commission — Gas producing and gathering facilities.

7. Inclusion by the Federal Power Commission of producing and gathering facilities of a natural gas company in its rate base, instead of determining the field price or actual field value of natural gas and allowing such price or value as an operating expense, is not error, p. 109.

Valuation, § 373 — Natural gas leaseholds — Original cost — Market value.

8. Inclusion of natural gas leaseholds in a rate base at cost instead of market value is not erroneous, p. 109.

Appeal and review, § 18 — Scope of review — Question not raised below — Inclusion of unregulated property.

9. A natural gas company is precluded by § 19(b) of the Natural Gas Act, 15 USCA § 717r(b), from attacking a rate order of the Federal Power

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Commission, on the ground that producing properties and gathering facilities have been included in the rate base, by failing to object in its application for rehearing before the Commission to the inclusion of such properties, p. 109.

Return, § 11 — Basis — Actual legitimate cost.

10. The Federal Power Commission, in fixing natural gas rates, is not bound to use any single formula, and it is not precluded from using actual legitimate cost as a rate base, p. 110.

Appeal and review, § 28.4 — Scope of review — Rate decision of Federal Power Commission.

11. The question on review of a rate order of the Federal Power Commission is not the method of valuation which was used but the end result obtained, since the issue is whether the rate fixed is "just and reasonable," p. 110.

Return, § 101 — Adequacy — Natural gas company.

12. A return of 6½ per cent on the rate base of a natural gas company was held to be adequate where the cost of servicing long-term debt was 2.88 per cent and the cost of meeting requirements of preferred stock was 5.8 per cent, leaving a return of 12 per cent on common stock, p. 110.

APPEARANCES: John S. L. Yost, of Baltimore, Maryland, and Ira Lloyd Letts, of Providence, Rhode Island, argued the cause for petitioners; Chester T. Lane and Charles V. Shannon, both of Washington, D. C., argued the cause for respondents.

Mr. Justice DOUGLAS delivered the opinion of the court:

[1-3] Panhandle Eastern Pipe Line Co. (whom we will call Panhandle Eastern) owns properties which constitute a natural gas production, transportation, and marketing system.¹ The system extends from gas fields in Texas, Oklahoma, and Kansas through Missouri, Illinois, Indiana and Ohio and into Michigan.² The

city of Detroit and the county of Wayne, Michigan, filed a complaint with the Federal Power Commission alleging that Panhandle Eastern's rates on gas sold to a distributing company in Michigan for resale there were unjust and unreasonable. The Commission on its own motion instituted an investigation under the Natural Gas Act of [June 21,] 1938, 52 Stat 821, Chap 556, 15 USCA § 717, 4 FCA title 15, § 717, of all of the interstate wholesale rates of Panhandle Eastern.³ Following extended hearings the Commission entered an interim order, here under review, finding petitioner's interstate wholesale rates to be excessive and requiring petitioner to reduce them on

¹ The other petitioners. Illinois Natural Gas Co. and Michigan Gas Transmission Corp., were wholly owned subsidiaries of Panhandle Eastern. They sold all of their properties to Panhandle Eastern after these proceedings were instituted and were then dissolved. Accordingly, we will refer throughout to the three companies as "petitioner."

² The Commission found that the aggregate lines in this system constitute "the longest

natural gas pipe line in the world, serving more than 200 cities, towns, and communities with more than 700,000 retail customers in Texas, Kansas, Missouri, Illinois, Indiana, Michigan, and Ohio." 45 PUR(NS) 203, 208.

³ The investigation also included Illinois Natural Gas Co. and Michigan Gas Transmission Corp. See note 1, *supra*.

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and after November 1, 1942, as to reflect, when applied to petitioner's 1941 transportation and sales a reduction of not less than \$5,094,384 per annum below the 1941 consolidated gross operating revenues of \$17,789,573. See (1942) 45 PUR(NS) 203, 223. That order was affirmed by the circuit court of appeals for the eighth circuit, one judge dissenting in part. (1944) 54 PUR(NS) 26, 143 F(2d) 488. The case is here on a petition for a writ of certiorari which we granted limited to the two questions which we will discuss. But before we reach them we must dispose of a challenge made by the city of Cleveland, as amicus curiae, to the jurisdiction of the circuit court of appeals for the eighth circuit over the subject matter of this litigation. Panhandle Eastern sought review in that court of the Commission's order under § 19 (b) of the act, 15 USCA § 717r(b), 4 FCA title 15, § 717r(b) which so far as material here provides:

"Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural gas company to which the order relates is located or has its principal place of business, or in the United States court of appeals for the District of Columbia. . . ."

The petition for review stated that petitioner had its principal place of business in Kansas City, Missouri. That was not denied by the Commission and at no time prior to the entry of the judgment affirming the Commission's order was the jurisdiction of the circuit court of appeals chal-

lenged. After the judgment of affirmance had been entered, however, the city of Cleveland filed a motion in the circuit court of appeals for leave to intervene and challenged the jurisdiction of that court on the ground that petitioner did not have its principal place of business in that circuit. The same objection is pressed here.

If the objection is to the jurisdiction of the court, it does not come too late. *Industrial Addition Asso. v. Commissioner of Internal Revenue* (1945) 323 US 310, 89 L ed —, 65 S Ct 289. But we think it goes to venue not to jurisdiction. We read § 19(b) to invest all intermediate Federal courts with the power to review orders of the Commission, provided, however, that if a circuit court of appeals, rather than the court of appeals for the District of Columbia, is chosen, the parties may object that the particular circuit lacks the specified qualifications. Venue relates to the convenience of litigants. *Neirbo Co. v. Bethlehem Shipbuilding Corp.* (1939) 308 US 165, 84 L ed 167, 60 S Ct 153, 128 ALR 1437. The provisions of § 19(b) plainly are of that character. Review in the court of appeals for the District of Columbia where the Commission must maintain its principal office and hold its general sessions ([June 23, 1930] 46 Stat 797, 16 USCA § 792, 5 FCA title 16, § 792) is convenient for the Commission. Review in any circuit where the natural gas company is located or has its principal place of business is designed to serve the convenience of the company. The general grant of authority in § 19(b) to all the courts of appeal suggest that the question of which one should

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exercise the power in a particular case is a question of venue. None of the respondents objected at any time to the venue of the court below. The right to have a case heard in the court of proper venue may be lost unless seasonably asserted. *Industrial Addition Asso. v. Commissioner of Internal Revenue*, *supra*. It may be waived by any party, including the government. *Peoria & P. U. R. Co. v. United States* (1924) 263 US 528, 535, 536, 68 L ed 427, 430, 431, 44 S Ct 194; *Industrial Addition Asso. v. Commissioner of Internal Revenue*, *supra*. The objection of the city of Cleveland which came after judgment had been rendered came too late. Cf. *United States v. California Co-op. Canneries* (1929) 279 US 553, 556, 73 L ed 838, 841, 49 S Ct 423. Hence, we need not decide whether the suit was brought in the proper circuit.

[4-6] *Segregation of the Regulated and Unregulated Businesses.* Panhandle Eastern makes direct industrial sales as well as sales to distributing companies for resale. The Commission made no segregation or separation of the properties used in these two classes of business. Nor did it make an allocation of costs between the regulated and unregulated phases of the business as it did in *Colorado Interstate Gas Co. v. Federal Power Commission*, *Canadian River Gas Co. v. Federal Power Commission* (1945) 323 US —, 89 L ed —, 58 PUR(NS) ante, p. 65, 65 S Ct 829, and *Colorado-Wyoming Gas Co. v. Federal Power Commission*, decided this day [323 US —, 89 L ed —, 58 PUR(NS) ante, p. 94, 65 S Ct 850]. The reasons which the Commission advanced for its failure to make any

allocation are so crucial to the disposition of the case that we quote from the opinion:

"Upon the record before us, we consider it unnecessary to make an allocation of the respondents' business as between sales for resale and direct sales. The direct sales are made to nineteen industrial customers on an interruptible basis and at prices fixed in competition with other fuels.

"According to respondents' own evidence, no capacity has ever been constructed or provided in their gas plant for these direct industrial customers. It is equally clear that deliveries are made to them only when there is available excess off-peak capacity not required by the other wholesale customers. As evidence of this fact, in 1941 the volume of gas sold to the direct industrial customers amounted to 13.2 per cent of the total system sales, whereas on the system peak day of the 1941-1942 winter the direct industrial sales constituted only 2.69 per cent of the total deliveries, due to interruptions and curtailments brought about by the necessity for meeting the wholesale customer requirements.

"Testimony of respondents' witnesses discloses that only \$128,848 of the entire investment in plant (less than one-sixth of one per cent) is used exclusively in the service of the direct industrials. Moreover, the respondents themselves treat their entire business as a unit and make no segregation of costs or profits on their books as between the two classes of sales. Indeed, Panhandle Eastern's president testified quite clearly on cross-examination that any attempt to allocate would be 'theoretical,' 'unrealistic,'

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and 'not practical' because of the unified character of the business.

"Deliveries to the direct industrials are made only when the plant is not fully used in serving the requirements of the wholesale business, and are curtailed or interrupted when the capacity is required by the wholesale customers. It is apparent that the incidental direct industrial business is in reality a by-product of the wholesale business, comparable to the respondents' gasoline extraction business. All parties are agreed that the expenses and revenues in connection with the sale of gasoline extracted from the natural gas should be treated as an integral part of the respondents' entire operations. Thus, it is manifest from the evidence that the direct industrial sales are purely incidental to the main or principal enterprise, viz.: the wholesale business of the respondents." 45 PUR (NS) at p. 218.

Petitioner contends that these reasons do not justify the failure of the Commission to make a formal allocation either of the property or the costs between the regulated and unregulated business. It says that the direct sales are beyond the jurisdiction of the Commission even though they are comparatively small. It asserts that the fact that the direct sales are on an interruptible basis merely emphasizes the relatively small amount of the cost of construction and operation attributable to such sales. It says that no waiver of the statutory right to have the direct sales free from regulation

can be inferred and that in any event the Commission's jurisdiction cannot be enlarged by waiver. And it contends that the Commission's finding that the direct industrial business is "in reality a by-product of the wholesale business" is not supported in reason or in fact.

We agree that the Commission must make a separation of the regulated and unregulated business when it fixes the interstate wholesale rates of a company whose activities embrace both. Otherwise the profits or losses, as the case may be, of the unregulated business would be assigned to the regulated business and the Commission would transgress the jurisdictional lines which Congress wrote into the act.⁴ The Commission recognizes this necessity. As it stated in *Re Cities Service Gas Co.* (Fed PC 1943) 50 PUR(NS) 65, 89: "The company's facilities and operations are devoted in part to natural gas service which is not subject to our jurisdiction. This service consists principally of gas sales made directly to large industrial consumers. The necessity arises, therefore, for making an allocation of costs as between the jurisdictional and non-jurisdictional sales." The question is whether a formal allocation was necessary under the exceptional circumstances of this case.

We state the question that narrowly because the dispute in this case reflects not a rejection by the Commission of the principle of allocation

industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production on gathering of natural gas."

⁴ Section 1(b) 15 USCA § 717(b); 4 FCA title 15, 717(b) provides:

"The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial,

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but a disagreement over the propriety of the procedure followed here.

What the Commission did was to allocate to the interstate wholesale business all of the earnings from the entire business in excess of a $6\frac{1}{2}$ per cent return. In so far as that procedure allocated to the interstate wholesale business any earnings from the direct industrial sales in excess of $6\frac{1}{2}$ per cent, it is said to be justified by the use which the direct industrial business made of the main transmission line and its facilities. If that was unfair, the order must be set aside. If it was fair, no reversible error is shown.

A witness for petitioner testified at the hearing that under petitioner's allocation of costs the unregulated business has the use of facilities of the company without any charge. He testified that there should be a charge against the unregulated business for the use of that property. Another witness for petitioner stated that the company did not make any allocation between the regulated and unregulated business—"that is, allocation of jointly used assets"—in determining what would be charged to the unregulated sales. He stated, "It may be heresy to say so but we try to charge our nonregulated customers all the traffic will bear." It was conceded that the company attempts no allocation in the conduct of its business. The business is operated as a unit. And one of petitioner's officers testified:

Q. That is, any attempt to allocate return, as between regulated business and unregulated business: is that what you meant was unrealistic?

A. That is correct. . . . If you are going to allocate it theoretically you should allocate it on the basis of

the investment and the expenses incident to each part of the business.

Q. But it is theoretical?

A. That is correct.

Q. And not practical?

A. That is what I am trying to say.

Petitioner presented evidence showing that in the test year 91.57 per cent of its total revenues, or \$16,289,045, was received from its wholesale sales and 8.43 per cent, or \$1,500,527, was received from its direct industrial sales. It presented a study showing total operating expenses of about \$7,900,000 (not including Federal income taxes and return) and assigning \$499,699 to the direct industrial sales. Thus an apparent profit of \$1,000,828 before income taxes was shown for the direct industrial sales. But that study did not allocate any of the annual depreciation expense of the main transmission line (\$2,238,589) to the direct industrial sales. Of the \$633,270 ad valorem taxes on transmission lines, only \$1,738 applicable to the laterals used exclusively for direct industrial sales were allocated to them. None of the main transmission line operating and maintenance costs was charged to the direct industrial sales.

Petitioner recognized the unfairness of attributing to the direct industrial sales all of the apparent profit of \$1,000,828. One of petitioner's witnesses testified:

Q. Is there any engineering basis for a division, from an engineering standpoint?

A. Not as an engineering matter. I do not know of any basis. As a business matter, I think there are ways in which it could be fairly decided. I think it requires some judgment based

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upon business experience to make a fair allocation of it but there is a little over a million dollars, some portion of which could, in all fairness, be set aside as a charge against operations on the nonregulated sales and a credit against operations on the regulated sales.

He went on to indicate what he thought a fair allocation would be:

A. It is my opinion that that \$1,000,828.98 should be divided fifty-fifty.

Q. Why?

A. It is just my judgment as a businessman that would be a fair allocation of it.

Q. You mean fifty-fifty as between regulated and nonregulated business?

A. That is correct. I think that would be a fair allocation.

Q. That is a business judgment estimate, not a mathematical estimate?

A. That is right. In that way, this nonregulated business has contributed half a million dollars a year towards the reduction in cost of the regulated business and if it does not contribute something, I do not think there is any justification for having the business.

Petitioner requested the Commission to find that it had built no capacity for its direct industrial sales which were "incremental" in nature and that it was reasonable to allocate "50 per cent of the net earnings from nonregulated sales as a credit to net earnings from regulated sales, as compensation for the temporary use of such facilities provided for regulated sales but used from time to time in transporting the gas for direct, interruptible, nonregulated sales, when not required for regulated sales." But it

does not appear that petitioner requested the Commission to make a segregation of the properties used in the two classes of business. No such request was included in the petition for rehearing. At that stage the petitioner merely asserted that the Commission erred (1) in taking the proceeds from the direct industrial sales into consideration in determining the amount of its profits and in ordering the rate reduction; and (2) in failing reasonably to allocate petitioner's earnings between regulated sales and unregulated sales. That precludes an attack in the courts on the Commission's order for failure to make a segregation of property. For § 19(b) of the act provides that: "No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do." No such excuse has been tendered.

On these facts we cannot say that the Commission transgressed the jurisdictional requirements of the act when it failed to make a formal allocation of costs or of property. All agreed that an allocation on the basis of investment or cost would be impractical. All agreed that some division of the apparent profit from the direct industrial business had to be made. All agreed that the fair division was a matter of judgment not mathematics. In view of those concessions by petitioner, the manner in which it conducted its business, its failure to insist on a segregation of property in its petition for rehearing, and its own failure to keep accounts which reflected a segregation of the properties or an al-

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location of costs among the two classes of business, we do not think it can now be asserted that the Commission erred in forsaking a formula and using its informed judgment instead.

We do not mean to imply that such concessions would warrant a departure of the Commission from the statutory scheme of regulation. The issue is a much narrower one. The Commission did not undertake to fix industrial rates. The Commission, as was its duty, merely determined what earnings were properly allocable to the unregulated business. Petitioner disagrees with the result. The use of a formula for an allocation of costs or a segregation of property might or might not have been more favorable to petitioner. But once the use of such a formula is waived or is conceded to be impractical or theoretical, there must be some discretion in the Commission to make that determination through the exercise of its informed judgment. We cannot say that the Commission abused its discretion by conceding on the basis of the special circumstances here presented that earnings of the entire business in excess of a 6½ per cent return should be allocated to the interstate wholesale business. The small investment in the direct industrial business, the incremental nature of it, the extent of the interruptions in service to the direct industrial customers, the manner in which the management has treated it afford a basis for the refusal of the Commission to credit

it with a larger share of the earnings than 6½ per cent.

The Commission, while it lacks authority to fix rates for direct industrial sales, may take those rates into consideration when it fixes the rates for interstate wholesale sales which are subject to its jurisdiction. For § 5 (a) 15 USCA § 717d(a), 4 FCA title 15, § 717d(a) provides that whenever the Commission "shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, *or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential*, the Commission shall determine the just and reasonable rate." (Italics added.) It is clear that contracts covering direct industrial sales come within that italicized clause of § 5(a).⁸ The industrial rates in force here produce revenues of \$1,500,527 with expenses of \$499,699 which, according to petitioner, result in earnings of \$1,000,828 before income taxes. That is an apparent profit of more than 200 per cent. It is a fairly obvious indication that the regulated business is being saddled with costs which in fairness should be borne by direct industrial sales. That is an extremely relevant consideration for the Commission to take into account when it determines what costs are fairly attrib-

⁸ There must be filed with the Commission not only schedules of rates subject to the jurisdiction of the Commission but "the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and serv-

ices." Section 4(c), 15 USCA § 717c(c), 4 FCA title 15, § 717c(c). By Rule 54.30 the Commission requires the filing with it of all contracts for direct industrial sales involving sales in excess of 100,000 thousand cubic feet per year. See 8 Fed. Reg. 16101.

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table to each business and what the resultant rate for the wholesale business should be. Section 5(a) does not of course give the Commission authority to disregard the jurisdictional lines which Congress has drawn between interstate wholesale sales and direct industrial sales so as to level the profits between the two classes of business. But § 5(a) reinforces our conclusion that in the exceptional circumstances of this case the Commission did not exceed the limits of its discretion when it allocated to the regulated business all excess earnings of the entire business over $6\frac{1}{2}$ per cent.

[7-9] *Producing and Gathering Facilities.* The Commission constructed a rate base on the actual legitimate cost of petitioner's property in service on December 31, 1941, which it found to be \$78,814,292. It deducted \$12,596,987 for accrued depreciation, depletion and amortization. It added \$920,000 for working capital. The result was a rate base of \$67,137,305 on which the Commission allowed a return of $6\frac{1}{2}$ per cent which it found to be "fair and liberal." It included in the rate base petitioner's producing properties⁶ and gathering facilities. Petitioner claims that was error. It contends that it was incumbent on the Commission to determine the field price or actual field value of natural gas in the areas in which petitioner produces gas, to eliminate petitioner's leaseholds and producing and gathering facilities from the rate base, to disallow expenses of gathering and production, and to allow petitioner as an

expense item the field price or actual field value for all gas produced by it and taken into the pipe-line system. Evidence was offered to show what the market price or actual field value of the gas was. The argument is that the procedure followed by the Commission extends its jurisdiction over "the production or gathering of natural gas" contrary to the mandate of § 1(b).⁷ Petitioner suggests moreover that if its leaseholds are to be included in the rate base they should not be included at cost but at what petitioner claims to be the market value.⁸

This phase of the case is controlled by Canadian River Gas Co. v. Federal Power Commission, 323 US —, 89 L ed —, 58 PUR(NS) ante, p. 65, 65 S Ct 829. We need not repeat what we said there. It is clear that the value of producing properties and gathering facilities is affected whenever rates are fixed. That is inevitably true whether the leaseholds are put into the rate base or whether as petitioner urges the gas is valued as a commodity. That result is not avoided unless Congress puts a floor under production properties and gathering facilities of natural gas companies and fixes a minimum return on them. That Congress has not done. As Judge Sanborn aptly stated in the opinion of the circuit court of appeals: "If there is an infirmity in the Commission's determination of the amount which should be included in the rate base as the cost or value of such facilities, we think the infirmity arises from the method used in making the valua-

⁶ Petitioner produces approximately 50 per cent of the gas which it transports and sells, the remainder being purchased. The payments for gas purchased were allowed by the Commission as an operating expense.

⁷ See note 4, *supra*.

⁸ The market value is alleged to be about \$8,400,000 as compared with some \$955,000 which the Commission found to be the actual legitimate cost.

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tion, and not from any lack of jurisdiction." *Supra*, 54 PUR(NS) at p. 34, 143 F(2d) at p. 495. Petitioner, moreover, failed to object in its application for rehearing before the Commission to the inclusion of its producing properties and gathering facilities in the rate base. It is accordingly precluded by § 19(b) of the act from attacking the order of the Commission on the ground that they are included.

[10-12] Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 88 L ed 333, 51 PUR(NS) 193, 64 S Ct 281, holds that the Commission is not bound to use any single formula for the fixing of rates. It is not precluded from using actual legitimate cost as it did here. The question on review is not the method of valuation which was used but the end result obtained since the issue is whether the rate fixed is "just and reasonable." Section 5. In the present case the 6½ per cent return allowed by the Commission will permit petitioner to earn \$4,363,925 annually on the basis of the test year after meet-

ing all operating expenses which include depreciation, exploratory and development cost, and Federal income taxes. The cost of servicing petitioner's long-term debt is \$957,786 or 2.88 per cent. The cost of meeting the requirements of the preferred stock is \$939,000 or 5.8 per cent. That leaves \$2,467,139 for \$20,184,175 of common stock—a return of 12 per cent. The return would be 9 per cent figured on the basis of common stock and surplus of \$27,650,000. We are unable to say on these undisputed facts that the return is not commensurate with the risks, that confidence in petitioner's financial integrity has been impaired, or that petitioner's ability to attract capital, to maintain its credit, and to operate successfully and efficiently has been impeded.⁹ See Federal Power Commission v. Hope Nat. Gas Co. *supra* (320 US at p. 603, 51 PUR(NS) at p. 201).

Affirmed.

Mr. Chief Justice STONE, concurring:

Mr. Justice Roberts, Mr. Justice Reed, Mr. Justice Frankfurter, and

⁹ The Commission stated on this phase of the case:

"The evidence discloses that the respondents' business is exceptionally free from serious business hazards. The gas supply is assured for at least thirty to thirty-five more years. We have made ample provision in the annual depreciation allowance for the restoration of the capital investment in the property over the claimed life of the gas supply. The respondents' markets are rapidly expanding and embrace the large metropolitan area of Detroit, which alone takes 40 per cent of the entire output under a long-term contract. Panhandle Eastern's president testified that the demand for service is so great that within the next year the respondents will be called upon to sell every cubic foot of gas that can possibly be delivered through the lines, and that the capacity factor will increase from 70 per cent to 90 per cent.

"It is likewise apparent from respondents' own evidence that Panhandle Eastern has been

able to raise considerable capital at low cost. Only recently it successfully completed a financing program at remarkably low rates which resulted in a substantial reduction in its annual cost of capital. In February, 1941, Panhandle Eastern sold \$18,250,000 of first mortgage and first lien bonds and \$5,000,000 of serial notes at an average annual interest cost of 2.74 per cent. In February, 1942, it sold an additional \$10,000,000 of first mortgage bonds at an interest cost of 3.13 per cent and \$15,000,000 of preferred stock at a cost of 5.86 per cent. After the financing, Panhandle Eastern's annual cost of long-term debt was 2.88 per cent and preferred stock was 5.87 per cent, a combined annual cost of only 3.85 per cent for these securities.

"Panhandle Eastern has earned an average of 10.64 per cent on its net investment over the past five years, and Michigan Gas an average of 8.5 per cent during approximately the same period." 45 PUR(NS) p. 215.

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I concur for the following reasons only:

Petitioners did not raise objections in their application for rehearing to the Commission to the inclusion of their producing and gathering facilities in the rate base. By § 19(b) of the Natural Gas Act: "No objection to the order of the Commission shall be considered by the court unless such

objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do." No reason appears for the failure of petitioners here to make objection on rehearing to the inclusion of the production and gathering facilities in the rate base.

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Re Chicago, Burlington & Quincy Railroad Company

No. 32585
March 20, 1945

APPPLICATION for authority to discontinue railroad station agency and to substitute custodian service; denied.

Service, § 489 — Abandonment of railroad station agency — Burden of proof.

1. A railroad seeking authority to abandon a station agency and to substitute custodian service has the burden to show by a clear preponderance of the evidence that the proposed substitution is justified, and allegations made in support of the proposed change must be clearly and sufficiently supported by evidence, p. 112.

Service, § 489 — Discontinuance of railroad station agency — Substitution of custodian — Necessary proof.

2. The proof reasonably required in support of allegations urging authority to substitute a custodian for a railroad station agency should be of a clear and convincing character, although the allegations need not be proved beyond a reasonable doubt, as in the case of a criminal prosecution, p. 112.

Service, § 489 — Abandonment of station agency — Substitution of custodian — Necessary showing.

3. Proof supporting authority to substitute a custodian for a railroad station agency must include some showing, or at least some sound basis, for a conclusion or presumption that the situation in the particular year will be repeated in other years and is more than a mere temporary condition, p. 112.

Service, § 267 — Discontinuance of station agency — Evidence of past losses.

4. Proof relating to a railroad's losses at a certain station during the past year only is not sufficient to justify the authorization of the abandonment of such station, particularly where the past year was unusual because of a shortage

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of available freight cars, and where much of the business from that area consisted of shipments of carload lots of agricultural products that, by reason of the car shortage, had to be hauled by truck or shipped by rail from other stations, p. 113.

Service, § 267 — Abandonment of station agency — Wartime.

5. Substitution of custodian service for agency service at a railroad station should not be authorized where, during a wartime man-power shortage, there is no showing that a part time employee of proper capability can be had for the small compensation proposed to be offered, and where the evidence shows that if the station were closed, additional driving by automobile would become necessary and this would entail not only the employment of man-power but the expenditure of scarce gasoline, oil, and tires, p. 114.

By the COMMISSION: On January 3, 1945, a petition in the above-entitled matter was filed by the Chicago, Burlington & Quincy Railroad Company. Attached were affidavits with respect to the posting and giving of notice in accordance with the requirements of the Commission. Pursuant to due notice as required by law and by the rules and regulations of the Commission a hearing was held at the offices of the Commission in Springfield on February 23, 1945. At the said hearing appearances were entered on behalf of the petitioner and on behalf of residents in the community of Lowder and also on behalf of the Order of Railroad Telegraphers. Evidence was introduced and the case was marked heard and taken.

The proposal of the petitioner is to change the status of the railroad station at the unincorporated community of Lowder in Sangamon county, Illinois, from an agency station to a non-agency station. In other words the company proposes to dispense with the services of a station agent at this point and to place the station building in charge of a caretaker who would be a part-time employee. The duties now performed by the station agent at Lowder would be performed under the

proposed arrangement, by the agent at the station of Virden about 5 miles to the south or by the agent at Waverly about 6 miles to the north of Lowder. The proposal is opposed by the local residents and by the Order of Railroad Telegraphers.

This case presents a question with respect to the matter of burden of proof and of quantum of proof that should be required where, as here, a station agency has been maintained for many years and there is now a proposal to abandon that agency. The Commission's General Order 117 requires among other things that "no railroad company shall move or abandon any depot or station building, or abandon an agency at any depot, or discontinue any regular passenger train, without first having made application to and received the consent of the Commission." Such consent is sought by the petition here under consideration.

[1-3] The railroad company here is the proponent of a proposed change from an existing situation which has prevailed for many years and in which the public served by the station in question is vitally interested. The burden of proof obviously is upon the railroad company. The burden rests upon the railroad company, as petition-

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er and as proponent, to show by a clear preponderance of the evidence that the proposed change is justified. To do this, in the case here under consideration, it is necessary that the evidence clearly and sufficiently support the allegations made in support of the proposed change. These allegations are summarized in the petition as follows: "The amount and character of railroad business transacted by petitioner in the station (Lowder) is not sufficient to justify the continuance of said agency and the said business can be transacted by petitioner's agent or agents maintained in near-by stations and a custodian can be substituted at Lowder without undue inconvenience to petitioner's patrons and the expense of maintaining such open agency is an unnecessary and undue burden upon the interstate and intrastate business of petitioner."

The proof reasonably required in support of these allegations should be of a clear and convincing character, not necessarily that the allegations must be proved beyond a reasonable doubt, as in the case of a criminal prosecution, but nevertheless the community should not be deprived of local station facilities except upon such proof as will establish clearly the necessary basic facts to justify the proposed change. There should not be a withdrawal of a station agency upon the basis of mere surmise or conjecture or of proof that fails to establish by a clear preponderance of evidence, the necessary basic facts. Moreover the situation so to be established should be something more than a mere temporary and passing condition. It is not enough for instance to show that the revenues fail to achieve a satisfactory ratio to the

expenses for one particular year. There must be some showing or at least sound basis for a conclusion or presumption that the situation in the particular year will be repeated in other years and is more than a mere temporary condition.

[4] In the proceeding now before the Commission it is vital to petitioner's case that it establish the first and outstanding of its allegations, namely, that "the amount and character of railroad business transacted by the petitioner in the said station is not sufficient to justify the continuance of the said agency. . . ." The evidentiary facts and findings which reasonably may be based thereon are shown in more detail in the findings of this order but it may be observed for the purpose of this discussion that the petitioner has introduced evidence of its revenues derived from the operation of the Lowder station for a period of six years, being from 1939 to 1944, inclusive. These revenues fluctuate greatly from year to year. The lowest year was 1942 with revenues of \$3,952, and the highest year was 1939 with revenues of \$14,284. The revenues for the last year shown, 1944, were \$9,645. In order to reflect the financial result of the business transacted at this station the revenues properly credited to Lowder station must be compared with expenses attributable to this station. On this point, the petitioner introduced showings of local expenses for the same six years. These, however, are only the expenses of maintaining the local agency and the revenues obviously must be compared in some manner not only with the local expenses but also with a just proportion of the expenses other than local.

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This the petitioner has attempted to do by a certain formula, but only for the year 1944. These figures if taken at their face value would show a net loss of \$1,581.45 for the year 1944 for the Lowder station. There are no showings whatever of what the result would be by the application of the formula for any previous year nor any evidence upon which the Commission could draw a reasonable conclusion that a loss was incurred in preceding years. For instance, the next preceding year, being 1943, shows revenues over \$2,000 greater than 1944 and local expenses approximately \$500 less. Nor could there be any presumption of a net loss for the years 1941, 1940, or 1939, in each of which years the expenses were several hundred dollars less than for 1944, and, in two of those three years, the revenues much greater. The net computed loss for 1944, taking the petitioner's computations and assumptions at their face value, was not large, either absolutely or in proportion to the volume of business transacted; there is no basis for a conclusion or finding by this Commission that the said station has been conducted at a loss during any year except the year 1944, nor is there any sound basis for a presumption or conclusion that a loss is reasonably to be expected from future operation of the station.

This situation is determinative of the issue in this case. The petitioner has not sustained the burden of establishing its first and most essential allegation with respect to revenues and expenses. There is, moreover, evidence in the record to the effect that the year 1944 was unusual due to shortage of available freight cars, that much of the business from the Lowder

station consists of shipments of car-load lots of agricultural products and that by reason of the car shortage a very considerable volume of those products which normally would have been shipped from Lowder during that year were hauled by truck or shipped from other stations. This would go far toward explaining the reduction in the revenues of the Lowder station below the revenues of the preceding year, and certainly, if this is the explanation, there is no justification for abandonment of the station agency because of such a situation.

[5] It may also be remarked that with respect to wartime conditions and the manpower shortage there are two sides to the question. The proof shows that a person skilled in Morse telegraphy is not required at the Lowder station since all of the communication work, including that in connection with the handling of trains, is done by telephone and not by telegraph. The petitioner's proposition involves the employment of a caretaker and this is intended to be a part-time employee but there is no showing that such a part-time employee of proper capability can be had for the small compensation proposed to be offered. Moreover while there was some controversy on the point, nevertheless the weight of the evidence is to the effect that if the station were closed additional driving by automobile between Lowder and the neighboring towns of Virden and Waverly would become necessary and this would entail not only the employment of manpower but the expenditure of gasoline, oil and tires.

The Commission having considered the aforesaid petition and all of the

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evidence both oral and documentary, the statements and arguments of counsel, and being fully advised in the premises, is of the opinion and finds:

(1) that the petitioner, the Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the railroad, is a railroad corporation and operates a system of railroad as a common carrier between points located in the state of Illinois and also to points located in other states and that a line of the petitioner's railroad extends through the unincorporated community of Lowder in Sangamon county, Illinois:

(2) that the railroad maintains and has maintained for many years past a railroad station or depot and a station agency in the said community of Lowder and that the petition now before the Commission proposes that said agency be discontinued and a part-time caretaker substituted and that the business now and heretofore transacted by the station agent at Lowder be transacted by agents at Virden about 5 miles to the south of Lowder or at Waverly about 6 miles to the north of Lowder;

(3) that the revenues derived from the operation of the said station at Lowder, including freight, passenger, express, milk, and miscellaneous revenue, for the calendar years from 1939 to 1941 inclusive were as follows:

1939	\$14,284
1940	12,387
1941	9,335
1942	3,952
1943	11,835
1944	9,645

(4) that the strictly local expenses incurred in operating the said station at Lowder for the same calendar years

set forth in the last preceding finding were as follows:

1939	\$1,654
1940	1,668
1941	1,797
1942	1,967
1943	1,983
1944	2,473

(5) that by reason of the matters set forth in the last two preceding findings the strictly local expenses of conducting the station at Lowder have been at all times during the past six years far below the revenues derived from the operation of the said station;

(6) that the only showing before this Commission with respect to the expenses of the railroad other than the strictly local expenses at Lowder and with respect to their apportionment to the Lowder station, and also with respect to their apportionment of revenues between the Lowder station and other portions of the railroad, consists of a computation introduced in evidence by the railroad company and covering only the year 1944; that the said computation was made by the use of a certain formula and assumptions and that according to the said formula and assumptions the revenues applicable to Lowder station for the said year 1944 were \$5,045.66; the local expenses were \$2,472.51; the expenses applicable to the Lowder station, other than local expenses (determined by said formula), were \$4,154.60; the total of local expenses and other expenses being \$6,627.11; and that this sum compared with applicable revenues of \$5,045.66 as aforesaid indicated a net loss for the Lowder station for the year 1944 of \$1,581.45;

(7) that the showing referred to in the last preceding finding does not form any reasonable basis for a con-

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clusion, presumption or finding that the said station at Lowder was operated at a loss in the years 1943, 1941, 1940, or 1939; nor will the said showing reasonably support a conclusion, presumption or finding that a loss may be expected to be incurred in the operation of the station at Lowder for ensuing years;

(8) that the year 1944 was, with respect to the matter here under consideration, an unusual year in that a severe shortage of freight cars occurred during that year, that a large portion of the revenues of the station at Lowder normally are derived from carload shipments of agricultural products and that during the year 1944 by reason of the said car shortage a considerable portion of the said agricultural products which normally would have been shipped from said Lowder station were hauled from the community by means of trucks, and that circumstance reasonably would have an adverse effect upon the revenues derived from the operation of the said Lowder station for the particular year 1944;

(9) that the discontinuance of the agency station at Lowder would give rise to a certain amount of additional driving by patrons between Lowder and the neighboring communities of Virden and Waverly and would result in additional use of gasoline, oil, and

tires which are now critical materials as well as the employment of additional manpower;

(10) that the evidence in this case does not establish that the amount and character of the railroad business transacted by the petitioner at its station in Lowder is not sufficient to justify the continuance of the said agency;

(11) that the evidence does not establish that a custodian can be substituted for the station agent at Lowder without undue inconvenience to the public and patrons of the railroad;

(12) that the evidence does not establish that the expense of maintaining the said agency at Lowder is an unnecessary and undue burden upon the interstate and intrastate business of the petitioner;

(13) that such loss, if any, as has been occasioned by the operation of the said agency at Lowder occurred (in so far as the evidence shows) only in the year 1944, that the said loss was not large either absolutely or in proportion to the volume of business transacted, and that the said loss for that particular year is explainable by an unusual situation with respect to temporary shortage of freight cars as hereinbefore set forth; and

(14) that the prayer of the petition in this case should be denied.

SECURITIES AND EXCHANGE COMMISSION

SECURITIES AND EXCHANGE COMMISSION

Re Georgia Power & Light Company

File No. 70-936, Release No. 5641

March 2, 1945

APPPLICATION for exemption of first mortgage bonds from competitive bidding rule; denied.

Security issues, § 112 — Exemption from competitive bidding.

Exemption of first mortgage bonds from the competitive bidding requirements of Rule U-50 should be denied where no special circumstances are present to justify a conclusion that competitive bidding is inappropriate, although it is contended that a sale has been negotiated with an insurance company and that the contract price is at least as good as that which could be obtained by competitive bidding in view of expense involved.

APPEARANCES: George G. Reynolds and James A. Austin of Winthrop, Stimson, Putnam & Roberts, for Georgia Power and Light Company; Robert N. Hislop and David I. Bursten, for the Public Utilities Division of the Commission.

By the COMMISSION: Georgia Power and Light Company ("Georgia") has filed an application under § 6 (b) of the Public Utility Holding Company Act of 1935, 15 USCA § 79 f(b) with respect to the issuance and sale by Georgia of \$2,500,000 principal amount of first mortgage bonds to mature in thirty years.¹ In connection with that application, it

requests that such issuance and sale be excepted from the competitive bidding requirements of Rule U-50 of the General Rules and Regulations under the act.²

The sole problem with which we are now concerned is the requested exemption from competitive bidding. Following a hearing held after due notice, we heard oral argument on this question. Our conclusions herein are based upon an independent review of the record.

Pursuant to a plan of recapitalization which we have approved,³ Georgia's outstanding mortgage debt, consisting of \$3,027,500 principal

¹ Georgia is a subsidiary of General Gas and Electric Corporation and Denis J. Driscoll and Willard S. Thorp, trustees of Associated Gas and Electric Corporation, registered holding companies.

² Rule U-50 provides certain limited exceptions to the normal requirements of competitive bidding. As to applications filed under § 6(b), exception requires a finding by the Commission that compliance with the competitive bidding procedure is not "appropriate in the public interest or for the protection of investors or consumers as a condition to the

exemption of such issuance or sale from the provisions of § 6(a) of the act, or to aid the Commission (in carrying out the provisions of § 6(b) of the act) to determine such terms and conditions as it may be appropriate to impose in the public interest or for the protection of investors or consumers in exempting such issuance or sale from the provisions of § 6(a) of the act. . . ."

³ Re Georgia Power & Light Co., Holding Company Act Release No. 5568, January 25, 1945.

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amount of 5 per cent bonds due 1978 and having a redemption price of 103½, is to be reduced to \$2,500,000.⁴ The bond issue now proposed is designed to refund the remaining bonds so as to effect a reduction of interest charges.

While the recapitalization plan was being considered, applicant approached several insurance companies on the question whether they would be interested in submitting offers to purchase the proposed bonds in a "modified competitive bidding procedure" after approval of the plan. Applicant states that it deemed this course preferable to competitive bidding because the additional expenses that would be involved in competitive bidding with respect to this small issue, including the expense of registration under the Securities Act of 1933, were estimated by the applicant at approximately \$30,000 and would, it believed, more than offset any increase in price that might be secured through competitive bidding. One of the companies approached, The Northwestern Mutual Life Insurance Company of Milwaukee ("Northwestern"), a holder of approximately \$850,000 of Georgia's outstanding 5 per cent bonds, offered to purchase the entire issue of the new bonds and, after negotiation, a contract was entered into in June 1944 between it and Georgia providing for its purchase at

a price of 103½ (the call price of Georgia's outstanding bonds to be refunded by the new issue), and coupon rate of 3½ per cent. Georgia did not negotiate with any other prospective purchasers as to price or interest rate.

Applicant contends that the price to be obtained for the bonds from Northwestern is at least equal to that which could be obtained by competitive bidding in view of the additional expense which would be involved in competitive bidding. In support of its position it submitted a comparison with the sale prices and coupon rates of other bond issues which it considered similar. The staff of our Public Utilities Division also compared the Northwestern offer with offers secured in competitive bidding on recent bond issues it considered similar, and reached the opposite conclusion. We need not go into the question whether these comparisons are valid or not. The competitive bidding rule was designed to afford, among other things, an orderly and fair method of determining whether the cost of money to the issuer is reasonable and fair.

We have had occasion in previous cases to pass upon the contention that competitive bids might possibly be lower than a private commitment already obtained. In rejecting it, we pointed out:

"True, such a possibility exists but

⁴ Georgia's pro forma capitalization and surplus as of April 30, 1944, giving effect to the consummation of its recapitalization plan, was as follows:

	Amount
Long-term Debt	
1st Mtg. 5's due 1978	\$2,500,000
Serial notes payable to REA ...	58,554
Total	\$2,558,554

58 PUR(NS)

Common stock—21,050 shs., no par value	1,422,234
Capital surplus	51,189

Total Capitalization and Surplus

\$4,031,977

SECURITIES AND EXCHANGE COMMISSION

there is, at the least, an equal possibility that the bonds may be sold at higher prices through competitive bidding. If such an argument were permitted to be persuasive, the competitive bidding rule could be completely nullified in every case where, notwithstanding our Rule, a company enters into a private contract for the sale of securities and, thereafter, petitions for an exception to the Rule. Furthermore, this argument ignores the fact that our competitive bidding rule is also designed to assure the maintenance of competitive conditions and to eliminate any possibility that affiliated underwriters or other purchasers will

monopolize the distribution or purchase of securities or will obtain them on more favorable terms than others." ⁶

We are unable to find any special circumstances in this case that would justify a conclusion that compliance with paragraphs (b) and (c) of Rule U-50, with respect to the proposed issuance and sale of the Georgia bonds, is not appropriate in the public interest or for the protection of investors or consumers within the provisions of the rule.

The request for an exception must be denied. An appropriate order will issue.

⁶ Re Public Service Co. of Indiana, Holding Company Act Release No. 3521, May 9, 1942. See also Re Northern Indiana Pub. Service

Co. (1944) Holding Company Act Release No. 5031, 53 PUR(NS) 193, 199.

NEW YORK SUPREME COURT, SPECIAL TERM, RICHMOND COUNTY

Dees Cigarette & Automatic Music Company, Incorporated

v.

New York Telephone Company

— Misc —, 53 NY Supp(2d) 651
March 2, 1945

APPPLICATION for order directing telephone company to restore service to premises after interruption by police; granted.

Service, § 134 — Denial at request of police — Claim of illegal use.

1. A rule of a telephone company that service interrupted by the police will not be restored until the police department has approved the application for installation should be enforced only where there is reasonable probability or reasonable ground for believing that the service will be used for illegal purposes; mere fears or suspicions unfounded in fact do not warrant application of the rule, p. 121.

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Mandamus, § 9 — Restoration of telephone service — Suspicion of unlawful use.

2. Mandamus to compel a telephone company to restore service interrupted by the police, because of charges of recording of bets and wagers in violation of law, should be granted when no factual reasons are given and no reasonable grounds are alleged for believing that telephone service will be used for illegal purposes, p. 122.

APPEARANCES: L. W. & A. B. Widdecombe, of Stapleton (L. W. Widdecombe, of Stapleton, of counsel), for petitioner; Ralph Brown, of New York city (Jordan R. Bassett, of New York city, of counsel), for respondent New York Telephone Co.; Ignatius M. Wilkinson, of New York city (H. Zamore, of New York city, of counsel), for Commissioner of Police Department of city of New York.

NORTON, J.: Petitioner corporation moves for an order directing the respondent telephone company to install two telephones in its place of business in premises 122 DeKalb street, Concord, Staten Island. These premises have been leased by the petitioner for the past seven years, during all of which time the petitioner has conducted therein the business of buying, selling, renting, exchanging, and installing automatic musical and cigarette vending machines. The business grosses \$250,000 annually.

The respondent telephone company supplied the petitioner corporation with telephone service under contract with it, the service consisting of a switchboard containing three trunk lines and three extensions installed in the said premises 122 DeKalb street, and assigned designations Gibraltar 7-7111, 7112, 7113.

On October 26, 1943, this service was interrupted by the police department who removed all of the telephone

equipment from the petitioner's leased premises at the above address, presumably because of charges filed against John Delisio, then president of the petitioner, and Michael Delisio, managing agent.

The information filed in the court of special sessions of the city of New York charged John Delisio with violations of § 986 of the Penal Law, and specifically alleged that John Delisio, then president of the petitioner corporation, engaged in pool selling and bookmaking in violation of said statute in premises 120 and 122 DeKalb avenue. Michael Delisio was charged with being the lessee and occupant of these premises and with knowingly permitting the recording of bets and wagers in violation of said section and permitting persons to be engaged in such violation in said premises, aiding and abetting the said John Delisio in said unlawful acts.

After a trial in said court, John Delisio, then president of petitioner corporation, was convicted of engaging in pool selling and bookmaking over telephones located in premises 120 DeKalb avenue, which telephones were not assigned to the petitioner corporation by the respondent telephone company nor installed in petitioner's place of business 122 DeKalb street. John Delisio is no longer connected in any capacity with petitioner corporation.

Michael Delisio, managing agent of the petitioner corporation, was acquit-

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ted of the charge filed against him at the close of the People's case, the court finding that there was no proof to sustain the charge against him nor any proof that any telephones assigned by the respondent to the petitioner corporation had been used for any unlawful purposes.

No charge whatever was made at any time against the petitioner corporation for such unlawful use of its telephones. The record of the trial discloses that the deputy police inspector who ordered the removal of the petitioner's telephone service testified that he gave an order to rip down the switchboard in petitioner's premises in spite of the fact that there was not a single betting transaction overheard over the telephones of the petitioner.

On November 20, 1944, the petitioner applied to the respondent telephone company in writing for the installation of telephone service in its place of business 122 DeKalb street, and was thereafter advised that said application for telephone service would be denied because of the refusal of the police department of the city of New York to approve of the same.

[1] The respondent telephone company urges in opposition to this application a practice or rule of the company to the effect that whenever a subscriber's telephone service is interrupted by the police, or whenever the police request termination of service upon an alleged violation of law, service will be terminated and not restored or new service furnished such subscriber until the police department has approved the application for such installation in such premises.

This practice and rule was applied by the respondent telephone company

in the instant case, and attached to respondent's answer and marked Exhibit A is a communication directed to the respondent by the police department indicating that the department does not approve of petitioner's application *at this time*. The respondent relies upon the disapproval of the application by the police department for its refusal to install the telephone service requested by the petitioner corporation.

This rule of the telephone company is a salutary one, and was presumably adopted in the interest of coöperation with the police department in the suppression of crime. The rule has been approved in *People ex rel. Restmeyer v. New York Teleph. Co.* (1916) 173 App Div 132, 133, 159 NY Supp 369, 370. In that case the court said: "Speaking generally, the telephone company is bound to furnish service to all who pay its proper charges and obey its reasonable regulations, but it is not required to furnish such service to those who are reasonably sure to use it for an illegal purpose." In commenting upon the facts in that case, the court said: "In short, the fact which stands out most prominently in this record is the relator's disposition to violate this particular law, unmitigated by repentance or promises of reform on his part. We think the telephone company was well within its right in refusing to furnish its telephone service to this relator in view of his former and *recent* illegal use of the telephone."

This rule should be enforced only where there is reasonable probability or reasonable ground for believing that the service will be used for illegal purposes. Mere fears or suspicions

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unfounded in fact do not warrant its application.

[2] The respondent telephone company takes the position that it cannot comply with the demand of the petitioner for the installation of telephone service without the approval of the police department of the city of New York which has been refused. In this situation the court, in the interest of justice and in order that the court might make a fair and proper final disposition of the matter, directed that the petitioner serve a copy of all papers on this application upon the police department of the city of New York, which is not a party herein, with a request that the police department appear herein and apprise the court of the reason for advising the respondent of their disapproval of the application. Pursuant to said request the

police department duly appeared and submitted papers in opposition to the application. No factual reasons are given by the police department in the papers submitted which would justify its disapproval of petitioner's application. No reasonable grounds are alleged for believing that telephone service will be used for illegal purposes. The opinions stated therein are not substantiated by facts, nor do the papers indicate any reasonable probability of unlawful or illegal use of telephone service.

I am of the opinion that the action of the police department in advising respondent of its disapproval of this application is not reasonably warranted by the circumstances disclosed.

The application is, therefore, granted.

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

Department of Conservation of State of Louisiana et al.

v.

Federal Power Commission

No. 11241

— F (2d) —

March 31, 1945

PETITION for review of order of Federal Power Commission authorizing construction and operation of interstate natural gas pipe line; order affirmed.

Certificates of convenience and necessity, § 121 — Natural gas pipe line — Conservation.

1. The Natural Gas Act does not make considerations of conservation

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determinative of the question whether a certificate of convenience and necessity should be granted for the construction and operation of an interstate pipe line through which gas would be withdrawn for an industrial use that may be regarded as inferior and wasteful, even though considerations of conservation may have a place in granting or refusing a certificate, p. 124.

Appeal and review, § 28.6 — Conclusiveness of orders — Gas pipe-line authorization — Conservation.

2. An order under § 7 of the Natural Gas Act, 15 USCA § 717f, authorizing the construction and operation of a pipe line to transmit natural gas for resale in interstate commerce must be upheld by the court when the evidence leaves no doubt that there is a public need and supports the Commission's finding that the applicant has contracts which put it in a position to fully supply that need, although it is contended that such authorization will permit the withdrawal of gas, an irreplaceable natural resource, for burning under boilers, an industrial use, that is regarded as inferior and wasteful, p. 124.

Before Hutcheson, Holmes, and McCord, CJ.

HUTCHESON, CJ.: In culmination of a loop line construction program of long standing,¹ Memphis Natural

Gas Company, on January 31, 1944, and on May 20, 1944, applied for certificates of convenience and necessity, and on November 21, 1944, obtained an order granting them.² This peti-

¹Beginning its operation as an interstate pipe-line company in 1928, its system consisted of an 18-inch pipe line extending from the Monroe, Louisiana, gas field through the states of Arkansas, Mississippi, and to Memphis, Tennessee. For the past seventeen years it has supplied natural gas to various city gate utility distributing companies, in the states of Arkansas, Mississippi, and Tennessee, the principal customer being the city of Memphis, Tennessee.

In 1940, it began a construction program of a loop line paralleling its original 18-inch pipe line from the Monroe field to Memphis. The proposed plan was to loop completely this line over a period of years. The purpose of the construction program was to provide pipe-line capacity to meet the increased demands of its city gate customers.

In 1940, 92 miles of the looping were completed; in 1941, an additional 55 miles were constructed; in 1942, and also in 1943, the company attempted to complete the loop line construction, but, due to war emergency conditions, the materials and priority assistances were unavailable, and it was not until December, 1943, that the War Production Board granted approval and permit to construct the balance of the loop line.

In connection with the construction of the lines in 1940 and 1941, it was not necessary for the company to obtain a certificate from the Federal Power Commission. However, § 7 of the Natural Gas Act, 15 USCA § 717f, was amended as of February 7, 1942, and it became

necessary for the company to obtain from the Federal Power Commission a certificate of public convenience and necessity to construct the balance of the loop line.

²On January 31, 1944, it filed with the Federal Power Commission its application for a certificate of public convenience and necessity for the construction and operation of 62.5 miles of loop lines. Intervening in this proceeding were the state of Tennessee, the Memphis Light, Gas & Water Division of the city of Memphis, Tennessee, and The Independent Natural Gas Association of America, supporting the application, and the Public Service Commission of Louisiana, the Department of Conservation of the state of Louisiana, the National Coal Association, the United Mine Workers of America, the Order of Railway Conductors, the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, and the Switchmen's Union of North America, opposing it.

On May 20, 1944, the company filed with the Commission an application for a certificate of public convenience and necessity for the construction and operation of a gas transmission line from Guthrie, Louisiana, in the Monroe gas field to Lisbon gas field in Claiborne Parish, Louisiana.

The same parties supporting and opposing the granting of the first certificate oppose this one also.

On June 10, 1944, the Commission, stating in its opinion and order that a sufficient showing of adequate gas reserve had not been made,

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tion filed under § 19(b)³ of the Natural Gas Act,⁴ seeks to vacate and set these orders aside.

[1, 2] In their motion for rehearing before the Commission, petitioners did formally make the point that the applicant had not shown itself possessed of sufficient reserves to adequately perform the service to the public for which the certificates were sought. But the real point made against the order in the rehearing was, and the real point made against it here is, that the certificates of public convenience and necessity may not stand because they were issued to permit the withdrawal of gas, an irreplaceable natural resource, for burning under boilers, an industrial use, that is regarded as inferior and wasteful, and, therefore, the granting of the certificates was not in, but against, the public interest.

The subordinate claim that the proof is insufficient to support the finding that the company has adequate supplies to enable it to properly serve the public interest may be disposed of in short order by saying that the record amply supports the Commission's find-

ing both that there was a public need to be served and that the applicant for the certificates showed itself adequately equipped to perform it.

The main contention, that the order is invalid and the certificates may not stand because issued for a wasteful use of gas, is, we think, no better taken, but a demonstration of this will require some further reference to the act, to the proceedings before the Commission, and to the authorities governing the review of its orders.

The Natural Gas Act was enacted to vest, and it did vest, the Commission with jurisdiction to regulate the transportation and sale of natural gas for resale in interstate commerce.⁵ Section 7(c) of the act, as amended, requires those desiring to engage in such transportation or sale, or to construct, extend, acquire, or operate any facility thereunder, to apply to the Commission for a certificate of public convenience and necessity. Section 7(e) of the act governs the issuance of certificates. It provides that

"a certificate shall be issued to any qualified applicant therefore, . . .

denied and dismissed without prejudice the application for the certificate in the looping project. A petition for rehearing, reconsideration, and reversal of the Commission's order of June 10, 1944, was made and granted, and an opportunity to present further evidence was provided.

The two dockets involving the certificates for the looping project and the Lisbon line were consolidated by order of the Commission, and a hearing in the consolidated causes began on September 7th, and was concluded on October 5, 1944. On November 21, 1944, the Commission entered its opinion and order, issuing certificates of public convenience and necessity for the construction and operation of both the loop line and the Lisbon line.

Petitioner here filed application for rehearing and stay order in the consolidated docket, and it was denied on December 12, 1944, and on December 21, 1944, this petition was filed.

³ As material here, it provides:

"Any party to a proceeding under this act aggrieved by an order issued by the Commis-

sion in such proceeding may obtain a review of such order in the circuit court of appeals.

"No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive." 15 USCA § 717r(b).

⁴ 15 USCA § 717-717(w).

⁵ *Illinois Nat. Gas Co. v. Central Illinois Pub. Service Co.* (1942) 314 US 498, 86 L ed 371, 42 PUR(NS) 53, 62 S Ct 384; *Natural Gas Pipeline Co. v. Federal Power Commission* (1942) 315 US 575, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736; *Ohio Pub. Utilities Commission v. United Fuel Gas Co.* (1943) 317 US 456, 87 L ed 396, 46 PUR(NS) 257, 63 S Ct 369; *Federal Power Commission v. Hope Nat. Gas Co.* (1944) 320 US 591, 88 L ed 333, 51 PUR(NS) 193, 64 S Ct 281.

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if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the act and the requirements, rules and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, . . . is or will be required by the present or future public convenience and necessity; . . . ”

Petitioners do not claim that the Memphis Natural Gas Co. is not a qualified applicant or that it has not the financial ability to constitute, finance and operate the proposed facilities. The Commission has found on evidence amply supporting it that the applicant has assured itself adequate gas reserves for the operation of the line. The Commission has also found that the proposed extension is, or will be, required by the present or future public convenience and necessity, and viewing the matter entirely from the standpoint of consumer demand for the gas, the evidence is of such conclusive character that it demands the finding that was made. Petitioners' reliance, however, is not on the ordinary considerations which control where the dispute is between rival companies, as it was in *Arkansas Louisiana Gas Co. v. Federal Power Commission* (1940) 36 PUR(NS) 71, 113 F(2d) 281, or over rates or the limits of Federal and state power, as it was in cases cited in Note 5, above. They base their whole case on reading the words "public convenience and necessity" as including

considerations of conservation of natural gas with a consequent prohibition against the issuing of certificates where, as here, there is protest and proof by a state that the gas to be withdrawn under the authority of the certificates will be put to an economically wasteful use, that is to the inferior one of being burned under boilers. Pointing to the evidence of the already highly developed industrial use of the gas, and the evident purpose to extend and increase that use, petitioners insist that this sustains its burden of showing that the finding of fact by the Commission, that the issuance of the certificates will be required by the present or future public convenience and necessity, is not supported by substantial evidence. The applicant and those aligned with it on the side of the Commission insist that in granting or refusing certificates under the act, the kind of uses, viewed from the standpoint of inferior and superior, to which the gas to be carried in the line is to be put, is of no, or at least very little, significance. The Commission, they say, is concerned only with whether there is a public need or demand for the gas the line will supply and whether the applicant is in a position to adequately and properly serve that need if the certificate is granted. The Commission, while of the opinion that the act leaves questions of conservation to the state authorities and does not make the granting or refusal of certificates turn upon such questions, points out that it did, as shown by its two opinions in the case,⁶ give sympathetic con-

⁶In opinion of June 10, 1944, refusing the certificate on the loop line, the Commission did comment, on the capacity of standby-fuel equipment on the premises of certain industrial consumers, and on the fact that the estimated demand anticipated demands of new customers,

including a number proposed to be converted from the use of other available fuels to natural gas for boiler fuel purposes.

Too, it concluded: "(3) In view of the limited natural gas reserves shown by the record to be available to applicant, their pres-

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sideration to the fact of inferior use along with all the other facts in the case. So pointing it insists that the record as a whole furnishes no basis for petitioners' claim that its finding, that the certificates are required by the present or future public convenience and necessity, is without support in the evidence.

We agree with the Commission. Assuming, without deciding, that the Commission could properly consider as one of the facts entering into the granting or denial of the certificates the uses to which the gas was to be put, that is, that considerations of conservation had a place in such granting or refusal, we think it quite plain that the statute does not make such matters determinative. If, therefore, we assume, as the petitioners insist we should, that it was part of the Commission's duty to consider, as one of the underlying facts to be determined, whether the gas being taken is for inferior, and therefore wasteful, uses, we should still, upon this record, have to decline to hold that, in exercising, the Commission has abused, its powers un-

der the act. Normally it is for the Commission to draw the conclusion that the present or future public convenience and necessity either requires or does not require the granting of a certificate. Normally an order granting a certificate may be set aside only when the evidence admits of but one conclusion, that its granting will not serve public convenience and necessity, or that the applicant is not in a position to supply the need. Inferior and superior uses aside, the evidence in this case leaves in no doubt that there was a public need. It fully supports the finding, too, that the applicant has contracts which put it in a position to fully supply that need. As we read the statute and the authorities under it, the facts, on which alone petitioners rely, that the gas is to be taken out of the state to be used for burning under boilers, that this is an inferior use, and that Louisiana objects to its being so taken, do not furnish sufficient basis for a finding that the order of the Commission in granting the certificates was contrary to law. Throughout the argument and briefs it has been

ent rapid rate of depletion, and the effect of excessive rates of withdrawal of the ultimate recovery of gas therefrom, it is necessary and appropriate in the public interest that such natural gas resources be conserved in so far as possible for domestic, commercial, and superior industrial purposes. (4) The record does not contain sufficient showing that the proposed construction and operation are, or will be required by the present, or future public, convenience, and necessity. (5) Dismissal of the instant application without prejudice is appropriate in the public interest."

In its second opinion on rehearing, entered November 21st, 56 PUR(NS) 271, after hearing new evidence, the Commission found that applicant had sufficiently and satisfactorily increased its gas supplies; and that in the public interest the certificates for the proposed loop line and Lisbon line should be granted. The opinion dealt fully with the contention as to the use of natural gas for inferior purposes, including the increased use from change-over from coal to natural gas in future by custom-

ers of the plant. After pointing out that the question of the supply of natural gas had been a subject of communication by it to Congress, it concluded that the small amount of additional gas to be sold by applicant (only about 1.3 per cent of the total natural gas production of Louisiana) was not sufficient to cause any great loss.

The opinion concluded: "While we are not unsympathetic with the effort of the producing state of Louisiana to protect and conserve its natural gas resources for the benefit of its citizens, it is apparent that denial of applicant's request for these certificates will not afford the state of Louisiana a satisfactory solution of the problem posed by it. Such problem cannot be determined within the limits of these proceedings. It is reasonable, however, to condition the certificates so that the facilities herein authorized shall not be used for the transportation or sale of natural gas to any new customers of either applicant or United, except upon specific authorization by this Commission." (56 PUR(NS) at p. 283.)

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contended, not so much on the part of the Commission as on the part of those aligned with it, that the case in the end comes down to this, that Louisiana, under the guise of conservation against waste, is trying to monopolize for use in Louisiana, the gas the state produces, and it is urged upon authority⁷ that this cannot be done. The petitioners deny that they are trying to prevent proper movement of gas in interstate commerce. They insist that all that they are doing is to present evidence that the use to which the gas will be put under the certificates is a most inferior one, and that this being undisputed, the Commission, as matter of law, could not grant the certificates and we must set them aside. We have looked in vain for a criterion for such action on our part. Petitioners do not point us to, we have found no, guiding

language in the act, or in any decision construing it, which supports this view or, indeed, points in this direction. Viewing petitioners' contention in the light most favorable to them, the best that can be said upon this record for petitioners is that they made an issue upon whether the fact that some of the gas to be taken under the certificates will be put to inferior uses was sufficient to cause a denial of the certificates. The Commission thoughtfully and sympathetically considered the evidence tendered and determined that certificates qualified as they were qualified should issue. In so doing, it exercised the power of judgment confided to it and not to the courts. We think it plain that petitioners have failed to discharge the heavy burden the act placed on them and that their petition should be denied.

⁷ *Pennsylvania v. West Virginia*, 262 US 553, 67 L ed 1117, PUR1923D 23, 43 S Ct 658, 32 ALR 300; *Missouri ex rel. Barrett v. Kansas Nat. Gas Co.* 265 US 298, 68 L ed 1027, PUR1924E 78, 44 S Ct 544; *Foster-*

Fountain Packing Co. v. Haydel (1928) 278 US 1, 73 L ed 147, 49 S Ct 1; *West v. Kansas Nat. Gas Co.* (1911) 221 US 229, 55 L ed 716, 31 S Ct 564.

SECURITIES AND EXCHANGE COMMISSION

Re The United Corporation

File No. 59-25, Release No. 5634
February 26, 1945

PETITION by common stockholder of holding company requesting amendment of order in proceeding under § 11(b)(2) of the Holding Company Act in order to change method of electing directors; denied. For original decision of Commission, see (1943) 50 PUR(NS) 212.

Corporations, § 16 — Election of directors — Order under Holding Company Act.

A petition by a common stockholder of a registered holding company requesting amendment of an order of the Securities and Exchange Commis-

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sion (directing recapitalization on a common stock basis and requiring action so that company will cease to be a holding company) in order to change the method of election of directors should be denied when the allegations of fact, if true, do not establish the existence of circumstances warranting modification of the order or institution of further proceedings under § 11(b)(2) of the Holding Company Act, 15 USCA § 79k(b)(2).

By the COMMISSION: The Commission having, on August 14, 1943, 50 PUR(NS) 212, issued its findings and opinion and order herein pursuant to § 11 (b) (2) of the Public Utility Holding Company Act of 1935, 15 USCA § 79k (b) (2), directing The United Corporation to change its capitalization to one class of stock, namely common stock, and to take such action as will cause it to cease to be a holding company; and

Randolph Phillips, a common stockholder of The United Corporation, having filed on February 8, 1945, a petition requesting amendment of the Commission's aforementioned order of August 14, 1943, or the issuance of a new and additional order under § 11 (b) (2) of the act directing The United Corporation: (1) to abolish the method of non-cumulative voting at all elections of directors and to institute in its place the method of cumulative voting, (2) to provide that a quorum at all meetings for the election of directors shall

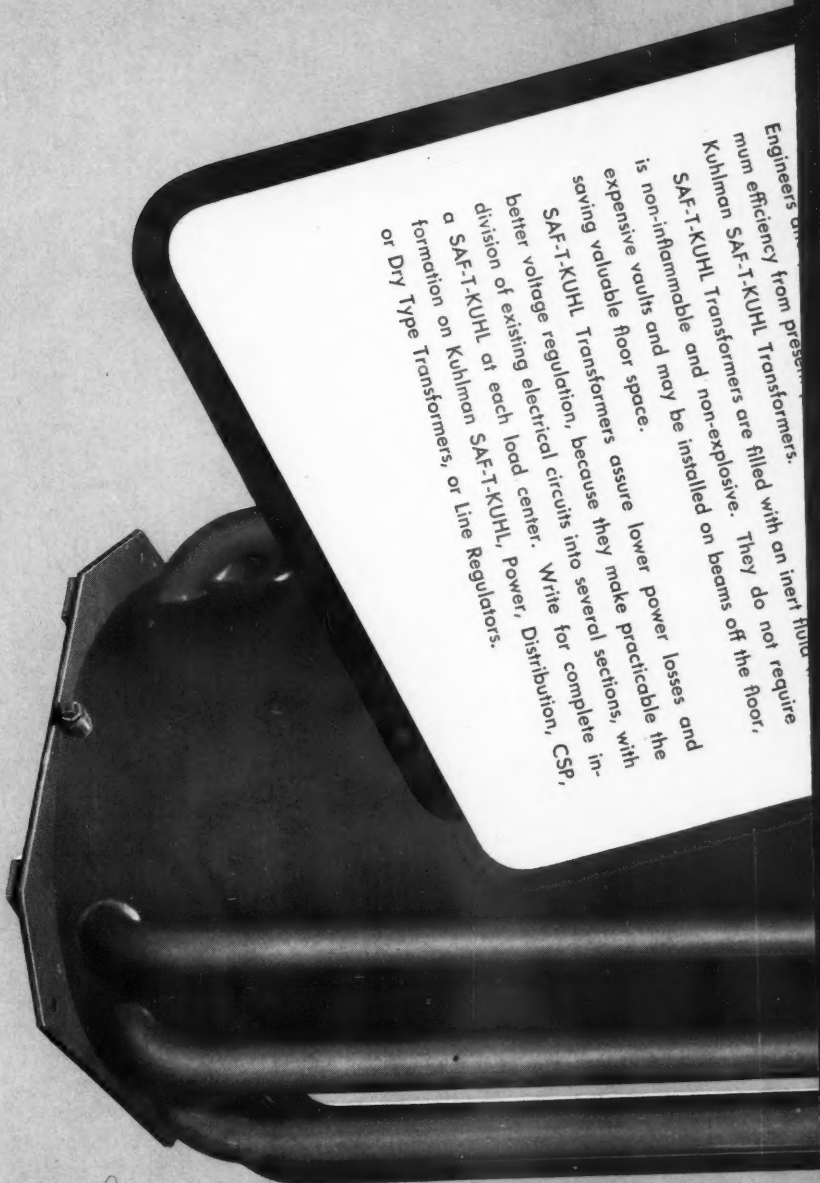
consist of a minimum of 50 per cent of the total voting stock outstanding in place of the present 25 per cent requirement, and (3) to require that adequate representation be given on the board of directors to stockholders opposing the present management; and

The Commission having considered the allegations of fact and the reasons advanced in support of the relief requested, and being of the opinion that said allegations of fact, if true, do not establish the existence of such circumstances as would warrant a modification of its order of August 14, 1943, *supra*, or the institution of further proceedings under § 11 (b) (2) of the act;

It is *ordered* that the petition of Randolph Phillips dated February 8, 1945, requesting the amendment of the Commission's order dated August 14, 1943, *supra*, or the issuance of a new and additional order pursuant to § 11 (b) (2) of the act be, and the same hereby is, denied.

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Industrial Progress

Selected information about products, supplies, and services offered by manufacturers. Also announcements of new literature and changes in personnel.



Egry Register Commemorates "Over 50 Years of Service"

IN 1943 The Egry Register Company, Dayton, Ohio, producers of Egry Business Systems, and one of our charter advertisers, concluded a half century of successful business. But, because war needs placed such great demands on the personnel of the firm, they were unable to commemorate the event at that time. This year, however, they published a very interesting and colorful brochure entitled "Over Fifty Years of Service."

Within the pages of this book is a real success story that started in 1893 with an idea and one printing press. It traces the company's progress through business depressions and the disastrous Dayton flood of 1893 that virtually wiped out the Egry plant. The company continued to grow and now enjoys a spot among the leaders of their industry. Today, Egry's products are known and used the world over. Many concerns in the utility industry have benefited by the advantages they afford.

The brochure contains many illustrations of plant activity, the company's old and new products, and some beautiful photographs of the city of Dayton, Ohio, the birthplace of aviation. A copy may be obtained by writing to Lawrence Rauh, president of the company.

New Distribution Engineer Announced By R&IE

ROY M. SMITH has recently been added to the engineering staff of the Railway and Industrial Engineering Company, Greensburg, Pennsylvania. He will be in charge of distribution engineering.

A graduate of University of Washington in 1925, Mr. Smith has had a wide experience in the design and development of relay and distribution breakers.

He came East from Pacific Electric Company and had previously worked with Westinghouse, Bryant Electric, and Roller-Smith companies.

Mr. Smith is a member of AIEE, having served for several years on the protective devices committee, and contributed several papers on the application and design of protective relays.

A-C Appointments

CHARLES F. CODRINGTON has been appointed assistant to the manager and A. E. Caudle has been appointed sales manager of the Allis-Chalmers blower and compressor department, it was recently announced at Milwaukee, Wis-

consin, by John Avery, manager of that department. Both men assumed their duties May 1st.

Addressograph-Multigraph Appointments Made

APPOINTMENT of J. C. Rosler, Sr., of Philadelphia as agent in charge of the newly established Multigraph agency in Reading, Pennsylvania, has been announced by W. H. Wilson, sales manager of the Multigraph division of Addressograph-Multigraph Corporation, Cleveland, Ohio, manufacturers of business simplifying equipment.

Mr. Wilson also announced the appointment of E. R. Glassman, of Houston, Texas, who will be in charge of the Nashville Multigraph agency to succeed Paul Hohman.

Mr. Hohman is returning to the company's Washington agency to aid in serving government and war agencies.

Henry C. Lemmon has been appointed supervisor of the El Paso (Texas) Addressograph-Multigraph agency, located at 508 North Stanton Street. Mr. Lemmon was formerly at the head of the customer service division of the company's Cleveland agency.

Clark Company Distribution And Sales Policy Changed

A MAJOR change in the nation-wide sales and distribution of its products is announced by The Clark Manufacturing Company of Cleveland, Ohio, manufacturers of steam specialties and fluid controls extensively used in the refrigeration field.

During the past thirty-seven years, steam and vacuum traps, pressure regulators, separators, and other steam specialties have been manufactured by Clark and marketed under the name of "Strong Steam Specialties." For this reason, the identity of the Clark Company itself has been little known in the field, although the products manufactured by it have been widely distributed.

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this date, brings all of the activities of product designing, engineering, manufacturing, sales, and distribution under the one roof of The Clark Manufacturing Company. From now on the company's products will be sold as "Clark Fluid Controls."

W. S. Goff, who assumed presidency of the Clark Company eighteen months ago, announces that the concern henceforth will maintain its individual identity, and that it will deal directly with its distributors and customers on a nation-wide scale.

The Clark Manufacturing Company is located in Cleveland at 1830 East 38th street. Its line of standard equipment includes a wide range of fluid controls for all types of industrial plants, institutional uses, and most manufacturing processes.

Electronic, Communications Equipment Released

ELECTRONIC and communications equipment and components released by the armed forces have been received by Electronic Corporation of America, agent for the Defense Supplies Corporation. The material is now available for resale from ECA's warehouse, 352 West 48th street, New York city.

Much of the material can be sold to manufacturers and distributors without any need for factory reconditioning. Other equipment, including partially finished items, will be completed and put into salable condition or broken down into components.

Catalog listings of available merchandise were prepared and were expected to reach distributors and industrial users before the end of May. Listings are to be revised weekly so that buyers will be able to have a continuous, accurate picture of available supplies.

Manufacturers, distributors, and industrial users of electronic equipment can obtain regular catalog listings by writing to Electronic Corporation of America, 45 West 18th street, New York city.

TECO Publishes Booklet on Wood Research and History

"THE Forest Industries Blaze New Trails," a brochure just published by the Timber Engineering Company, Washington, D. C., recites the long story of wood's usefulness to man, describes the current technological developments of wood as an engineering medium, and as the raw material of plastics and chemicals, and heralds the dawn of a new Age of Wood.

Wood, the book holds, is capable of being made the most universally useful of all industrial materials. It predicts that the winner of the "Battle of the Giants" in the next quarter century will be determined largely by science and the laboratories in mastering the mysteries of cellulose and lignin, that little known substance, nature's adhesive which holds together the fibers in a tree.

The handsome, 36-page illustrated booklet is one of the most ambitious promotion pieces to be produced by the lumber industry in many

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Westinghouse Division Director Named

F D. NEWBURY, vice president of the Westinghouse Electric Corporation, has announced the appointment of Frank W. Godsey, Jr., as manager of the new products division.

Mr. Godsey replaces G. H. Woodward, who has been transferred to South Philadelphia as manager of the corporation's aviation gas turbine division. His headquarters will be at the Pittsburgh, Pennsylvania, office.

Since joining Westinghouse in 1940, Mr. Godsey has served in the division he now directs. Patents have been granted on some 40 electrical and mechanical devices invented by the new manager, who also has written numerous technical papers for the American Institute of Electrical Engineers and the Electrochemical Society. In addition to the AIEE, he is a member of the Institute of Aeronautical Sciences and the Society of Automotive Engineers.

Food Machinery Announces Executive Changes

FOOD MACHINERY CORPORATION recently made two major changes in executive set-up.

Clarence M. Frazier, vice president, who has headed Peerless Pump division of the corporation for the last 18 months, returns to the corporate headquarters in San Jose, California, to assume more important work in connection with the over-all management.

Francis E. Fairman, Jr., formerly a General Electric executive, was named manager of the Peerless division and a vice president of Food Machinery Corporation.

G-E Appliance Distribution

C. R. PRITCHARD, general sales manager of General Electric's appliance and merchandise department, states that G-E's policy of distributing both major and traffic appliances postwar will be fundamentally identical to its prewar policy.

The department has 60 wholesale major appliance distributing outlets for G-E refrigerators, ranges, water heaters, home laundry equipment, dishwashers, disposals, electric sinks, and kitchen cabinets. These distributors, operating in assigned trading areas, will maintain sales organizations and local warehouse stocks at over 125 points, and will be prepared to serve the retail dealers in every city and town in the United States, Hawaii, and Alaska.

Better than 50 per cent of the distributing outlets will be independent wholesalers, many of whom have been with G-E since the General Electric refrigerator was first announced in 1927. While there have been some divisions

of large territories and appointments in smaller markets, G-E will have about the same number of independent distributors as it had before the war.

General Electric will operate its own major appliances wholesale distributing branches in nine major markets. Seven of them, located in New York, Newark, Cincinnati, St. Louis, Pittsburgh, Los Angeles, and Philadelphia are new.

The G-E Supply Corporation will continue as a wholesale distributor of the major appliances in about the same number of markets as before the war.

The company's traffic appliances, as in the prewar years, will be distributed through multiple wholesale outlets in order to reach all types of retailers. The utility outlets, electrical dealer, department store, furniture store, jewelry, drug and hardware retailers will be served by the same type of distributing organizations that supplied them in the prewar years.

Insulated Bushing for Thin Wall Conduit

DESIGNED especially for thin wall conduit, type "SBT" insulated bushing is one of the improved fittings introduced by the O. Z. Electrical Manufacturing Company, of Brooklyn, New York. It is made in six sizes to accommodate conduit from $\frac{1}{2}$ to 2 inches in diameter.

In a new 140-page catalog just issued, O. Z. gives complete details of these insulated bushings, as well as illustrations, descriptions, specifications, and price lists of the entire O. Z. line of conduit fittings, cable terminators, junction boxes, solderless connectors, power connectors, and grounding devices.

Sales Control Exhibit Ready

THE Systems Division of Remington Rand Inc. has prepared an exhibit of records used by public utility companies for sales control purposes entitled "Public Utilities Sales and Prospect Control." This exhibit implements the program outlined in "A Public Utility Postwar Sales Program," a recent Systems Division publication, and is available on a loan basis from the local offices of Remington Rand for a 10-day study period.

More specifically, the book, "Public Utility Postwar Sales Program," is devoted to outlining principles and objectives which comprise a technique of building load through efficient merchandising of appliances. "Public Utilities Sales and Prospect Control" is an exhibit of records which are being used by utilities to control sales development.

G-E Appointment

R. C. SOGGE has been named assistant manager of General Electric's central station divisions, according to an announcement by W. V. O'Brien, manager of the divisions. In addition to his new position, Mr. Sogge will continue as manager of the customer division, central station divisions.

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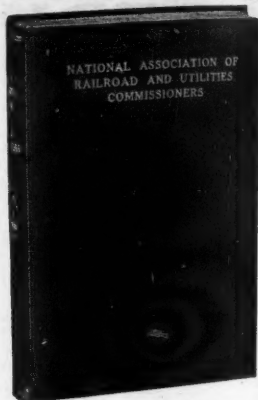
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